# Prison Guard 1AC

## 1AC

#### The prison system reproduces itself through educational spaces like debate. The role of the ballot is to resist the prison industrial complex

**Rodriguez 10[[1]](#footnote-1)**

A compulsory **deferral of abolitionist pedagogical possibilities** composes the largely unaddressed precedent of teaching in the current historical period. It is this deferral—generally unacknowledged and largely presumed—that both **undermines the emergence of an abolitionist pedagogical praxis** and illuminates abolitionism’s necessity as a dynamic practice of social transformation, over and against liberal and progressive appropriations of “critical/radical pedagogy.” Contrary to the thinly disguised ideological Alinskyism that contemporary liberal, progressive, critical, and “radical” teaching generally and tacitly assumes in relation to the prison regime, **what is** usually **required**, and what usually works as a strategy for teaching against the carceral common sense, **is a pedagogical approach that asks the unaskable, posits the necessity of the impossible**, **and embraces the creative danger** inherent in liberationist futures. About a decade of teaching a variety of courses at the undergraduate and graduate levels at one of the most demographically diverse research universities in the United States (the University [End Page 12] of California, Riverside) has allowed me the opportunity to experiment with the curricular content, assignment form, pedagogical mode, and conceptual organization of coursework that directly or tangentially addresses the formation of the U.S. prison regime and prison industrial complex. **Students** are consistently (and often unanimously) eager to **locate** their **studies within an abolitionist genealogy—**often **understanding their work as** potentially **connected to a living history of radical social movements and epistemological-political revolt**—and tend to embrace the high academic demands and rigor of these courses with far less resistance and ambivalence than in many of my other Ethnic Studies courses. There are some immediate analytical and scholarly tools that form a basic pedagogical apparatus for productively exploding the generalized common sense that creates and surrounds the U.S. prison regime. In fact, it is crucial for teachers and students to collectively understand that it is precisely the circulation and concrete enactment of this common sense that makes it central to the prison regime, not simply an ideological “supplement” of it. Put differently, many students and teachers have a tendency to presume that the cultural symbols and popular discourses that signify and give common sense meaning to prisons and policing are external to the prison regime, as if these symbols and discourses (produced through mass media, state spokespersons and elected officials, right-wing think tanks, video games, television crime dramas, etc.) simply amount to “bad” or “deceptive” propaganda that conspiratorially hide some essential “truth” about prisons that can be uncovered. This is a seductive and self-explanatory, but far too simplistic, way of understanding how the prison regime thrives. What we require, instead, is a sustained analytical discussion that considers how multiple layers of knowledge—including common sense and its different cultural forms—are constantly producing a “lived truth” of policing and prisons that has nothing at all to do with an essential, objective truth. Rather, this fabricated, lived truth forms the template of everyday life through which we come to believe that we more or less understand and “know” the prison and policing apparatus, and which dynamically produces our consent and/or surrender to its epochal oppressive violence. As a pedagogical tool, this framework compels students and teachers to examine how deeply engaged they are in the violent common sense of the prison and the racist state. Who is left for dead in the common discourse of crime, “innocence,” and “guilt”? How has the mundane institutionalized violence of the racist state become so normalized as to be generally beyond comment? What has made the prison and policing apparatus in its current form appear to be so permanent, necessary, and immovable within the common sense of social change and historical transformation? In this sense, **teachers and students** can attempt to concretely understand how they **are a dynamic part of the prison regime’s production and reproduction**—and thus how they might also be **part of its abolition through the work of building and teaching a radical and liberatory common sense** (this is political work that anyone can do, ideally as part of a community of social movement). Additionally, the abolitionist teacher can prioritize a rigorous—and vigorous—critique of the endemic complicities of liberal/progressive reformism to the [End Page 13] transformation, expansion, and ultimate reproduction of racist state violence and (proto)genocide; this entails a radical critique of everything from the sociopolitical legacies of “civil rights” and the oppressive capacities of “human rights” to the racist state’s direct assimilation of 1970s-era “prison reform” agendas into the blueprints for massive prison expansion discussed above.17 **The abolitionist teacher must be willing to occupy the difficult and often uncomfortable position of political leadership** **in the classroom**. To some, this reads as a direct violation of Freirian conceptions of critical pedagogy, but I would argue that it is really an elaboration and amplification of the revolutionary spirit at the heart of Freire’s entire lifework. That is, **how can a teacher expect her**/his **students to undertake the** courageous and difficult **work of inhabiting an abolitionist positionality**—even if only as an “academic” exercise—**unless the teacher** herself/himself **embodies**, performs, and oozes **that very same political desire**? In fact, it often seems that doing the latter is enough to compel many students (at least momentarily) to become intimate and familiar with the allegedly impossible. Finally, the horizon of the possible is only constrained by one’s pedagogical willingness to locate a particular political struggle (here, prison abolition) within the long and living history of liberation movements. In this context, “prison abolition” can be understood as one important strain within a continuously unfurling fabric of liberationist political horizons, in which the imagination of the possible and the practical is shaped but not limited by the specific material and institutional conditions within which one lives. It is useful to continually ask: on whose shoulders does one sit, when undertaking the audacious identifications and political practices endemic to an abolitionist pedagogy? There is something profoundly indelible and emboldening in realizing that one’s “own” political struggle is deeply connected to a vibrant, robust, creative, and beautiful legacy of collective imagination and creative social labor (and of course, there are crucial ways of comprehending historical liberation struggles in all their forms, from guerilla warfare to dance). While I do not expect to arrive at a wholly satisfactory pedagogical endpoint anytime soon, and am therefore hesitant to offer prescriptive examples of “how to teach” within an abolitionist framework, I also believe that rigorous experimentation and creative pedagogical radicalism is the very soul of this praxis. There is, in the end, no teaching formula or pedagogical system that finally fulfills the abolitionist social vision, there is only a political desire that understands the immediacy of struggling for human liberation from precisely those forms of systemic violence and institutionalized dehumanization that are most culturally and politically sanctioned, valorized, and taken for granted within one’s own pedagogical moment. To refuse [End Page 14] or resist this desire is to be unaccountable to the historical truth of our moment, in which the structural logic and physiological technologies of social liquidation (removal from or effective neutralization within civil society) have merged with history’s greatest experiment in punitive human captivity, a linkage that increasingly lays bare racism’s logical outcome in genocide.18 Abolitionist Position and Praxis Given the historical context I have briefly outlined, and the practical-theoretical need for situating an abolitionist praxis within a longer tradition of freedom struggle, I contend that there can be no liberatory teaching act, nor can there be an adequately critical pedagogical practice, that does not also attempt to become an abolitionist one. Provisionally, I am conceptualizing abolition as a praxis of liberation that is creative and experimental rather than formulaic and rigidly programmatic. **Abolition is a “radical” political position,** as well as a perpetually creative and experimentalpedagogy, **because formulaic approaches cannot adequately apprehend the biopolitics**, dynamic statecraft, **and** internalized **violence of** genocidal and proto-genocidal **systems of** human **domination.** As a productive and creative praxis, this conception of abolition posits the material possibility and historical necessity of a social capacity for human freedom based on a cultural-economic infrastructure that supports the transformation of oppressive relations that are the legacy of genocidal conquest, settler colonialism, racial slavery/capitalism,19 compulsory hetero-patriarchies, and global white supremacy. In this sense, **abolitionist praxis does not singularly concern itself with the “abolition of the prison industrial complex**,” although it fundamentally and strategically prioritizes the prison as a central site for catalyzing broader, radical social transformations. In significant part, this suggests envisioning and ultimately constructing “a constellation of alternative strategies and institutions, with the ultimate aim of removing the prison from the social and ideological landscape of our society.”20 In locating **abolition**ist **praxis within a longer political genealogy** that anticipates the task of remaking the world under transformed material circumstances, this position refracts the most radical and revolutionary dimensions of a historical Black freedom struggle that positioned the abolition of “slavery” as the condition of possibility for Black—hence “human”—freedom. To situate contemporary abolitionism as such is also to recall the U.S. racist state’s (and its liberal allies’) displacement and effective political criminalization of Black radical abolitionism through the 13th Amendment’s 1865 recodification of the slave relation through the juridical reinvention of a racial-carceral relation: Amendment XIII Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.21 [emphasis added] Given the institutional elaborations of racial criminalization, policing, and massive imprisonment that have prevailed on the 13th Amendment’s essential authorization to replace a regime of racist chattel slavery with racist carceral state violence, it is incumbent on the radical teacher to assess the density of her/his entanglement in this historically layered condition of [End Page 15] violence, immobilization, and capture. Prior to the work of formulating an effective curriculum and teaching strategy for critically engaging the prison industrial complex, in other words, is the even more difficult work of examining the assumptive limitations of any “radical pedagogy” that does not attempt to displace an epistemological and cultural common sense in which the relative order and peace of the classroom is perpetually reproduced by the systemic disorder and deep violence of the prison regime. In relation to the radical **challenging** of **common sense** discussed above, another critical analytical tool for building an abolitionist pedagogy **entails the rigorous, scholarly dismantling of the “presentist”** and deeply ahistorical **understanding of** policing and **prisons**. **Students** (and many teachers) **frequently enter such dialogues with an utterly mystified conception of** **the** policing and **prison** apparatus, **and do not** generally **understand that** 1) these apparatuses in their current form are very recent creations, and have not been around “forever”; and 2) **the rise of these institutional forms of criminalization**, domestic war, **and mass-scale imprisonment forms one link in a historical chain of genocidal and proto-genocidal mobilizations of the racist state** that regularly take place as part of the deadly global process of U.S. nation-building. In other words, not only is the **prison** regime a very recent invention of the state (and therefore is neither a “permanent” nor indestructible institutional assemblage), but it **is** institutionally and historically **inseparable from the precedent and contemporaneous structures of large-scale racist state violence**. Asserting the above as part of the core analytical framework of the pedagogical structure can greatly enable a discussion of abolitionist possibility that thinks of the **critical dialogue** as a necessary **continuation of long historical struggles against land conquest, slavery, racial colonialism, and imperialist war.** This also means that our discussions take place within a longer temporal community with those liberation struggles, such that we are neither “crazy” nor “isolated.” I have seen students and teachers speak radical truth to power under difficult and vulnerable circumstances based on this understanding that they are part of a historical record. I have had little trouble “convincing” most students—across distinctions of race, class, gender, age, sexuality, and geography—of the gravity and emergency of our historical moment. It is the analytical, political, and practical move toward an abolitionist positionality that is (perhaps predictably) far more challenging. This is in part due to the fraudulent and stubborn default position of centrist-to-progressive liberalism/reformism (including assertions of “civil” and “human” rights) as the only feasible or legible response to reactionary, violent, racist forms of state power. Perhaps more troublesome, however, is that this **resistance to** engaging with **abolitionist** praxis seems to also **derive from a deep and broad epistemological and cultural disciplining of the political imagination that makes liberationist dreams unspeakable**. This **disciplining is** most overtly produced through hegemonic state and cultural apparatuses and their representatives (including elected officials, popular political pundits and public intellectuals, schools, family units, religious institutions, etc.), but is also **compounded through** the **pragmatic imperatives of** many liberal and **progressive** nonprofit organizations and social **movements that reproduce the political limitations of the** [End Page 16] nonprofit **industrial complex**. 22 In this context, the liberationist historical identifications hailed by an abolitionist social imagination also require that such repression of political-intellectual imagination be fought, demystified, and displaced.Perhaps, then, **there is no viable** or defensible **pedagogical position other than an abolitionist one**. **To live** and work, learn and teach, and survive and thrive **in a time defined by** the capacity and political willingness to eliminate and neutralize populations througha culturally valorized, **state sanctioned** nexus of **institutional violence, is to** better **understand** why **abolitionist praxis in this historical moment is primarily pedagogical, within and against the “system” in which it occurs**. While it is conceivable that in future moments, abolitionist praxis can focus more centrally on matters of (creating and not simply opposing) public policy, infrastructure building, and economic reorganization, the present moment clearly demands a convening of radical pedagogical energies that can build the collective human power, epistemic and knowledge apparatuses, and material sites of learning that are the precondition of authentic and liberatory social transformations. The prison regime is the institutionalization and systemic expansion of massive human misery. It is the production of bodily and psychic disarticulation on multiple scales, across different physiological capacities. The prison industrial complex is, in its logic of organization and its production of common sense, at least proto-genocidal. Finally, **the prison regime is inseparable from**—that is, present in—the **schooling regime** in which teachers are entangled. **Prison is not simply a place to which one is displaced** and where one’s physiological being is disarticulated, at the rule and whim of the state and its designated representatives (police, parole officers, school teachers). **The prison regime is the** assumptive premise of **classroom** teaching generally. While many of us must live in labored denial of this fact in order to teach as we must about “American democracy,” “freedom,” and “(civil) rights,” there are opportune moments in which it is useful to come clean: the vast majority of what occurs in U.S. classrooms—from preschool to graduate school—cannot accommodate the bare truth of the proto-genocidal prison regime as a violent ordering of the world, a primary component of civil society/school, and a material presence in our everyday teaching acts. **As teachers, we are institutionally hailed to the service of genocide management**, in which our pedagogical labor is variously engaged in mitigating, valorizing, critiquing, redeeming, justifying, lamenting, and otherwise reproducing or tolerating the profound and systemic violence of the global-historical U.S. nation building project. As “radical” teachers, **we are politically hailed to betray genocide management** in order to embrace the urgent challenge of genocide abolition. **The short-term survival of those populations rendered most immediately vulnerable to the** mundane and **spectacular violence of this system, and the long-term survival of most of the planet’s human population** (particularly those descended from survivors of enslavement, colonization, conquest, and economic exploitation), **is significantly dependent on our willingness to embrace this form of pedagogical audacity**

#### And, Prisons aren’t just masses of concrete, but concrete structures of knowledge. They permeate our modes of thought to influence whom to lock up physically and socially – the 1AC is a discursive underpinning of the epistemological foundations of the prison – through methods like the 1AC, we can separate ourselves from the prison industrial complex and establish a platform for change

**Dillon 13[[2]](#footnote-2)**

Davis’s writing from prison addresses the problem of mistaking the prison for power when confronting and theorizing the politics of incarceration. In the 1971 essay “Political Prisoners, Prisons, and Black Liberation,” Davis argues that the sole purpose of **the police** was to “intimidate blacks” and to “to **persuade us with their violence that we are powerless to alter the conditions of our lives**.”529 Davis theorizes the violence of police and prisons as pervasive and unrelenting. Throughout the essay, Davis names the complicity between an anti-blackness as old as liberal freedom and new forms of penal and policing technologies that emerged in the 1970s in response to political upheaval and insurrection. Davis calls for **the abolition of what she terms the “law-enforcement-judicial-penal network”** in addition to arguing for the construction of a mass movement that could contest the “victory of fascism.” 530 Yet, in line with the political imaginaries at the time, Davis wanted more than an end to the prison and the violence of the police. Like other early black feminist writing, Davis did not just call for the overthrow of one form of state power so that a new one may take its place. Instead, Davis implied that **the social order itself must be undone.** For Davis, the prison was not the primary problem. **The prison was made** possible **by the** libidinal, symbolic, and **discursive regimes that actualized the uneven** institutionalized **distribution of value and disposability along** the lines of **race, gender, and sexuality.** Davis **call**ed **for the total epistemological and ontological undoing of the forms of knowledge** and subjectivity that were **produced by the racial state.** In short, hope, for Davis, meant that **the prison could not have a future**, and more so, **that a world that could have the prison would need to end as well**. This insight of Davis’s is why Critical Prison studies must engage queer of color and feminist of color scholarship. The critique of the prison advanced by many scholars of the prison does not comprehend the forms of devaluation that render poor women of color and queer people of color vulnerable to the power that makes the prison possible. As I have been arguing through Fugitive Life, **the prison is more than an institution, more than cement and steel walls, more than razor wire.** In her 1979 essay, “Coming of Age: A Black Revolutionary” the Black Panther and Black Liberation Army member Safiya Bukhari described this when she wrote, “The maturation process is full of obstacles and entanglements for anyone, but for a black woman it has all the markings of a Minotaur’s maze. I had to say that, even though nothing as spectacular takes place in the maturation process of the average black woman.”531 Like the writings of Assata Shakur and Davis, Bukhari argues that **everyday life in the free world mimick**ed and replicated her experience of **incarceration.** For her, black women’s lives are “a story of humiliation, degradation, deprivation, and waste that [starts] in infancy and [lasts] until death,” but unlike stories of spectacular repression and brutality in the prison, the forms of subjection and subjugation black women experience are so banal that metaphors fail to describe them.532 For Bukhari, the Greek myth of the Minotaur’s maze describes the impossibility of escape that confronts black women and other people surrounded by capitalism, white supremacy, and sexism. Yet the analogy fails because **the impossibility of escape is not isolated to a maze or a prison—it describes the mundane contours of the world.** Bukhari, Davis, and Shakur are three women who have all been prisoners and fugitives, and their critiques of the prison and neoliberalism emerged from these two symbiotic positionalities. **The fugitive and the prisoner are figures we can turn to as the sites of an immanent critique of the state’s policing and penal powers—figures produced by those same formations**. As fugitives and prisoners, Davis, Shakur, and Bukhari could see what they could not see before—invisible things became glaring in an absence they no longer inhabited, and what had always been visible became strange and unfamiliar. **Running away** was a tactic that **challenged the power of the neoliberal-carceral state,** yet **it also opened up new formations of knowledge** and politics. Yet, like Jenny’s flight from the police and the regulatory power of knowledge in American Woman, Davis, Shakur, and Bukhari were **not only forced to flee the police and disappear** into the world of the underground; **they have also been fugitives from normative modes of thought.** They were **always trying to flee the forms of knowledge constitutive of the racial state, the prison, heteronormativity, and** new **formations of** global **capital**. For all three, **there might not be a way out**, but that does not mean you stay put. In his correspondence with Barbara Smith, the white anti-racist and antiimperialist political prisoner David Gilbert describes the imperative to escape through his transcription of a poem to Smith written by the Turkish political prisoner Nazim Hikmet, “It’s This Way.” I stand in the advancing light, my hands hungry, the world beautiful. My eyes can’t get enough of the trees - they’re so hopeful, so green. A sunny road runs through the mulberries, I’m at the window of the prison infirmary. I can’t smell the medicinescarnations must be blooming nearby. It’s this way: being captured is beside the point, the point is not to surrender.533 Even though Gilbert’s body is immobilized, and will be until he dies, he remains committed to producing modes of thought that take flight. This is the lesson of the fugitive, a lesson Critical Prison studies must grasp **if the affects, desires, discourses, and ideas central to the prison are to end along with its cages, corridors, and guard towers.** **The prison’s end** must **exceed the institution**. The fugitive can lead the way. **Even if escape is impossible, we still have to run.**

#### The 1AC is not reformism, but non reformist reforms with the overarching orientation towards abolition. The method of decarceration is an effective combination of critique, action, and goals that holds reform and abolition in creative tension in order to maintain the advantages of both.

Sudbury 08 Julia, Metz Professor of Ethnic Studies at Mills College. Activist, in the prison abolitionist movement. Co-founder of Critical Resistance, a national abolitionist organization. “Rethinking Global Justice: Black Women Resist the Transnational Prison-Industrial Complex”, Souls: A Critical Journal of Black Politics, Culture, and Society, Volume 10, Issue 4

Chronic overcrowding has led to worsening conditions for prisoners. As a result of the unprecedented growth in sentenced populations, prison authorities have packed three or four prisoners into cells designed for two, and have taken over recreation rooms, gyms, and rooms designed for programming and turned them into cells, housing prisoners on bunk beds or on the floor. These new conditions have created challenges for activists, who have found themselves expending time and resources in pressuring prison authorities to provide every prisoner a bed, or to provide access to basic education programs. As prison populations continue to swell, **anti-prison activists are faced with the limitations of reformist strategies. Gains temporarily won are swiftly undermined**, new “women-centered” prison regimes are replaced with a focus on cost-efficiency and minimal programming and even changes enforced by legal cases like Shumate vs. Wilson are subject to backlash and resistance. 19 **Of even greater concern is the well-documented tendency of prison regimes to co-opt reforms and respond to demands for changes in conditions by further expanding prison budgets. The vulnerability of prison reform efforts to cooption has led Angela Y. Davis to** call for “non-reformist reforms,” reforms that do not lead to bigger and “better” prisons. 20 **Despite the limited long-term impact of human rights advocacy and reforms, building bridges between prisoners, activists, and family members** **is** an important step toward challenging the racialized dehumanization that undergirds the logic of incarceration. In this way, **human rights advocacy carried out in solidarity with prisoner activists is** an important component of a radical anti-prison agenda. Ultimately, however, **anti-prison activists aim** not to create more humane, culturally sensitive, women-centered prisons, but to dismantle prisons **and enable formerly criminalized people to access services and resources outside the penal system**. After three decades of prison expansion, more and more people are living with criminal convictions and histories of incarceration. In the U.S., nearly 650,000 people are released from state and federal prisons to the community each year. 21 Organizations of formerly incarcerated people focus on creating opportunities for former prisoners to survive after release, and on eliminating barriers to reentry, including extensive discrimination against former felons. The wide array of “post-incarceration sentences” that felons are subjected to has led activists to declare a “new civil rights movement.” 22 As a class, former prisoners can legally be disenfranchised and denied rights available to other citizens. While reentry has garnered official attention, with President Bush proposing a $300 million reentry initiative in his 2004 State of the Union address, anti-prison activists have critiqued this initiative for focusing on faith-based mentoring, job training, and housing without addressing the endemic discrimination against former prisoners or addressing the conditions in the communities which receive former prisoners, including racism, poverty, and gender violence. Organizations of ex-prisoners working to oppose discrimination against former prisoners and felons include All of Us Or None, the Nu Policy Leadership Group, Sister Outsider and the National Network for Women Prisoners in the U.S., and Justice 4 Women in Canada. All of Us Or None is described by members as “a national organizing initiative of prisoners, former prisoners and felons, to combat the many forms of discrimination that we face as the result of felony convictions.” 23 Founded by anti-imperialist and former political prisoner Linda Evans, and former prisoner and anti-prison activist Dorsey Nunn, and sponsored by the Northern California–based Legal Services for Prisoners with Children, All of Us Or None works to mobilize former prisoners nationwide and in Toronto, Canada. The organization's name, from a poem by Marxist playwright Bertold Brecht, invokes the need for solidarity across racial, class, and gender lines in creating a unified movement of former prisoners. Black women play a leading role in the organization, alongside other people of color. All of Us Or None focuses its lobbying and campaign work at city, county, and state levels, calling on local authorities to end discrimination based on felony convictions in public housing, benefits, and employment, to opt out of lifetime welfare and food stamp bans for felons, and to “ban the box” requiring disclosure of past convictions on applications for public employment. In addition, the organization calls for guaranteed housing, job training, drug and alcohol treatment, and public assistance for all newly released prisoners. 24 In the context of the war on drugs, many people with felony convictions also struggle with addictions. The recovery movement, which is made up of 12-step programs, treatment programs, community recovery centers, and indigenous healing programs run by and for people in recovery from addiction, offers an alternative response to problem drug use through programs focusing on spirituality, healing, and fellowship. However, the recovery movement's focus on individual transformation and accountability for past acts diverges from many anti-prison activists' focus on the harms done to criminalized communities by interlocking systems of dominance. As a result, anti-prison spaces seldom engage with the recovery movement, or tap the radical potential of its membership. Breaking with this trend, All of Us Or None has initiated a grassroots organizing effort to reach out to people in 12-step programs with felony convictions. This work is part of their wider organizing efforts that aim to mobilize former prisoners as agents of social change. Building on the strengths of identity politics, these organizations suggest that those who have experienced the prison-industrial complex first-hand may be best placed to provide leadership in dismantling it. As former prisoners have taken on a wide range of leadership positions across the movement, there has been a shift away from leadership by white middle-class progressives, and a move to promote the voices of those directly affected by the prison-industrial complex. Politicians who promote punitive “tough-on-crime” policies rely on racialized controlling images of “the criminal” to inspire fear and induce compliance among voters. Once dehumanized and depicted as dangerous and beyond rehabilitation, removing people from communities appears the only logical means of creating safety. **Activists who pursue decarceration challenge stereotypical images of the “criminal” by making visible the human stories of prisoners, with the goal of demonstrating** the inadequacy of incarceration as a response to the complex interaction of factors **that** **produce harmful acts.** Decarceration usually involves targeting a specific prison population that the public sees as low-risk and arguing for an end to the use of imprisonment for this population. Decarcerative strategies often involve the promotion of alternatives to incarceration that are less expensive and more effective than prison and jail. For example, Proposition 36, the Substance Abuse and Crime Prevention Act, which passed in California in 2000 and allowed first- and second-time non-violent drug offenders charged with possession to receive substance abuse treatment instead of prison, channels approximately 35,000 people into treatment annually. 25 Drug law reform is a key area of decarcerative work**.** Organizations and campaigns that promote drug law reform include Drop the Rock, a coalition of youth, former prisoners, criminal justice reformers, artists, civil and labor leaders working to repeal New York's Rockefeller Drug Laws. The campaign combines racial justice, economic, and public safety arguments by demonstrating that the laws have created a pipeline of prisoners of color from New York City to newly built prisons in rural, mainly white areas represented Republican senators, resulting in a transfer of funding and electoral influence from communities of color to upstate rural communities. 26 Ultimately, the campaign calls for an end to mandatory minimum sentencing and the reinstatement of judges' sentencing discretion, a reduction in sentence lengths for drug-related offenses and the expansion of alternatives, including drug treatment, job training, and education. Former drug war prisoners play a leadership role in decarcerative efforts in the field of drug policy reform. Kemba Smith, an African–American woman who was sentenced to serve 24.5 years as a result of her relationship with an abusive partner who was involved in the drug industry, is one potent voice in opposition to the war on drugs. While she was incarcerated, Smith became an active advocate for herself and other victims of the war on drugs, securing interviews and feature articles in national media. Ultimately, Smith's case came to represent the failure of mandatory minimums, and in 2000, following a nation-wide campaign, she and fellow drug war prisoner Dorothy Gaines were granted clemency by outgoing President Clinton. After her release, Smith founded the Justice for People of Color Project (JPCP), which aims to empower young people of color to participate in drug policy reform and to promote a reallocation of public expenditures from incarceration to education. While women like Kemba Smith and Dorothy Gaines have become the human face of the drug war, prison invisibilizes and renders anonymous hundreds of thousands of drug war prisoners. The organization Families Against Mandatory Minimums (FAMM) challenges this process of erasure and dehumanization through its “Faces of FAMM” project. The project invites people in federal and state prisons serving mandatory minimum sentences to submit their cases to a database and provides online access to their stories and photographs. 27 The “Faces of FAMM” project highlights cases where sentencing injustices are particularly visible in order to galvanize public support for sentencing reform. At the same time, it dismantles popular representations of the war on drugs as a necessary protection against dangerous drug dealers and traffickers, demonstrating that most drug war prisoners are serving long sentences for low-level, non-violent drug-related activities or for being intimately connected to someone involved in these activities. Decarcerative work is not limited to drug law reform. Free Battered Women's (FBW) campaign for the release of incarcerated survivors is another example of decarcerative work. The organization supports women and transgender prisoners incarcerated for killing or assaulting an abuser in challenging their convictions by demonstrating that they acted in self-defense. Most recently, FBW secured the release of Flozelle Woodmore, an African–American woman serving a life sentence at CCWF for shooting her violent partner as an 18 year old. Released in August 2007, after five parole board recommendations for her release were rejected by Governors Davis and then Schwarzenegger, Woodmore's determined pursuit of justice made visible and ultimately challenged the racialized politics of gubernatorial parole releases. 28 While the number of women imprisoned for killing or assaulting an abuser is small—FBW submitted 34 petitions for clemency at its inception in 1991, and continues to fight 23 cases—FBW's campaign for the release of all incarcerated survivors challenges the mass incarceration of gender-oppressed prisoners on a far larger scale. FBW argues that experiences of intimate partner violence and abuse contribute to the criminalized activities that lead many women and transgender people into conflict with the law, including those imprisoned on drug or property charges, and calls for the release of all incarcerated survivors. Starting with a population generally viewed with sympathy—survivors of intimate partner violence—FBW generates a radical critique of both state and interpersonal violence, arguing that “the violence and control used by the state against people in prison mirrors the dynamics of battering that many incarcerated survivors have experienced in their intimate relationships and/or as children.” 29 **In** **theorizing the intersections of racialized state violence and gendered interpersonal violence**, FBW lays the groundwork for a broader abolitionist agenda that refutes the legitimacy of incarceration as a response to deep-rooted social inequalities based on interlocking systems of oppression. By gradually shrinking the prison system, Black women activists involved in decarcerative work hope to erode the public's reliance on the idea of imprisonment as a commonsense response to a wide range of social ills. At the other end of anti-expansionist work are activists who take a more confrontational approach. By starving correctional budgets of funds to continue building more prisons and jails, they hope to force politicians to embrace less expensive and more effective alternatives to incarceration. Prison moratorium organizing aims to stop construction of new prisons and jails. Unlike campaigns against prison privatization, which oppose prison-profiteering by private corporations, and seek to return imprisonment to the public sector, prison moratorium work opposes all new prison construction, public or private. In New York, the Brooklyn-based Prison Moratorium Project (PMP), co-founded by former prisoner Eddie Ellis and led by young women and gender non-conforming people of color, does this work through popular education and mass campaigns against prison expansion. Focusing on youth as a force for social change, New York's PMP uses compilations of progressive hip hop and rap artists to spread a critical analysis of the prison-industrial complex and its impact on people of color. PMP's strategies have been effective; for example, in 2002 the organization, as part of the Justice 4 Youth Coalition, succeeded in lobbying the New York Department of Juvenile Justice to redirect $53 million designated for expansion in Brooklyn and the Bronx. 30 PMP has also worked to make visible the connections between underfunding, policing of schools, and youth incarceration through their campaign “Stop the School-to-Prison Pipeline.” By demonstrating how zero tolerance policies and increased policing and use of surveillance technology in schools, combined with underfunded classrooms and overstretched teachers, has led to the criminalization of young people of color and the production of adult prisoners, PMP argues for a reprioritization of public spending from the criminal justice system to schools and alternatives to incarceration. 31 Moratorium work often involves campaigns to prevent the construction of a specific prison or jail. In Toronto, for example, the Prisoner Justice Action Committee formed the “81 Reasons” campaign, a multiracial collaboration of experienced anti-prison **activists**, youth and student organizers, **in response to proposals to build a youth “superjail**” in Brampton, a suburb of Toronto. 32 **The campaign combined popular education on injustices in the juvenile system**, including the disproportionate incarceration of Black and Aboriginal youth, **with an exercise in popular democracy that invited young people to decide themselves how they would spend the $81 million slated for the jail.** Campaigners mobilized public concerns **about spending cuts in other areas**, including health care and education, to **create pressure on the provincial government to look into less expensive and less punitive alternatives to incarceration for youth**. While this campaign did not ultimately prevent the construction of the youth jail, the size of the proposed facility was reduced. More importantly, the c**ampaign** built a grassroots multiracial antiprison youth movement and raised public awareness **of the social and economic costs of** **incarceration**. Moratorium campaigns face tough opposition from advocates who believe that building prisons stimulates economic development for struggling rural towns. Prisons are “sold” to rural towns that have suffered economic decline in the face of global competition, closures of local factories, and decline of small farms. In the context of economic stagnation, prisons are touted as providing stable, well-paying, unionized jobs, providing property and sales taxes and boosting real estate markets. The California Prison Moratorium Project has worked to challenge these assertions by documenting the actual economic, environmental, and social impact of prison construction in California's Central Valley prison towns. According to California PMP: We consider prisons to be a form of environmental injustice. They are normally built in economically depressed communities that eagerly anticipate economic prosperity. Like any toxic industry, prisons affect the quality of local schools, roads, water, air, land, and natural habitats. 33 California PMP opposes prison construction at a local level by building multiracial coalitions of local residents, farm workers, labor organizers, anti-prison activists, and former prisoners and their families to reject the visions of prison as a panacea for economic decline. 34 In the Californian context, where most new prisons are built in predominantly Latino/a communities and absorb land and water previously used for agriculture, PMP facilitates communication and solidarity between Latino/a farm worker communities, and urban Black and Latino/a prisoners in promoting alternative forms of economic development that do not rely on mass incarceration. Scholar-activist Ruth Wilson Gilmore's research on the political economy of prisons in California has been critical in providing evidence of the detrimental impact of prisons on local residents and the environment. 35 As an active member of CPMP, Gilmore's work is deeply rooted in anti-prison activism and in turn informs the work of other activists, demonstrating the important relationship between Black women's activist scholarship and the anti-prison movement. 36 **Many anti-prison activists** view campaigns for decarceration or moratorium as building blocks toward the ultimate goal of abolition. **These practical actions promise short and medium-term successes that** are essential markers on the road to long-term transformation. However, abolitionists believe that like slavery, the prison-industrial complex is a system of racialized state violence that cannot be “fixed.” The contemporary prison abolitionist movement in the U.S. and Canada dates to the 1970s, when political prisoners like Angela Y. Davis and Assata Shakur, in conjunction with other radical activists and scholars in the U.S., Canada, and Europe, began to call for the dismantling of prisons. 38 The explosion in political prisoners, fuelled by the FBI's Counter Intelligence Program (COINTELPRO) and targeting of Black liberation, American Indian and Puerto Rican independence movements in the U.S. and First Nations resistance in Canada as “threats” to national security, fed into an understanding of the role of the prison in perpetuating state repression against insurgent communities. 39 The new anti-prison politics were also shaped by a decade of prisoner litigation and radical prison uprisings, including the brutally crushed Attica Rebellion. **These “common” prisoners**, predominantly working-class people of color imprisoned for everyday acts of survival, **challenged the state's legitimacy by declaring imprisonment a form of cruel and unusual punishment and confronting the brute force of state power**. 40 By adopting the term “abolition” **activists drew deliberate links between the dismantling of prisons and the abolition of slavery**. Through historical excavations, the “new abolitionists” identified the abolition of prisons as the logical completion of the unfinished liberation marked by the 13th Amendment to the United States Constitution, which regulated, rather than ended, slavery. 41 Organizations that actively promote dialogue about what abolition means and how it can translate into concrete action include Critical Resistance (CR), New York's Prison Moratorium Project, Justice Now, California Coalition for Women Prisoners, Free Battered Women, and the Prison Activist Resource Center in the U.S. and the Prisoner Justice Action Committee (Toronto), the Prisoners' Justice Day Committee (Vancouver) and Joint Action in Canada. CR was founded in 1998 by a group of Bay Area activists including former political prisoner and scholar-activist Angela Y. Davis. Initially, CR focused on popular education and movement building, coordinating large conferences where diverse organizations could generate collective alternatives to the prison-industrial complex. Later work has included campaigns against prison construction in California's Central Valley and solidarity work with imprisoned Katrina survivors. CR describes abolition as: [A] political vision that seeks to eliminate the need for prisons, policing, and surveillance by creating sustainable alternatives to punishment and imprisonment … . **An abolitionist vision** **means that** we must build models today that can represent how we want to live in the future. **It means** developing practical strategies for taking small steps that move us toward making our dreams real and that lead the average person to believe that things really could be different. **It means** living this vision in our daily lives. 42 In this sense, **prison abolitionists are tasked with a dual burden: first, transforming people's consciousness so that they can believe that a world without prisons is possible**, and second, taking practical steps to oppose the prison-industrial complex. **Making abolition more than a utopian vision** requires practical steps toward this long-term goal. CR **describes four steps that activists can get involved in**: shrinking the system, creating alternatives, shifting public opinion and public policy, and building leadership among those directly impacted by the prison-industrial complex. 43 Since its inception in the San Francisco Bay Area, Critical Resistance has become a national organization with chapters in Baltimore, Chicago, Gainesville, Los Angeles, New Orleans, New York, Tampa/St. Petersburg, and Washington, D.C. As such, CR has played a critical role in re-invigorating abolitionist politics in the U.S. This work is rooted in the radical praxis of Black women and transgender activists.

#### Thus, we advocate that the Supreme Court ought to reverse the Carrigan ruling in order to limit qualified immunity for prison officials.

#### First is Cruel and Unusual Punishment –

#### Prison officers are able to get away with torture against prisoners due to current qualified immunity loopholes.

**Sheng 12** Sheng, Phillip. “An ‘Objectively Reasonable’ Criticism of the Doctrine of Qualified Immunity in Excessive Force Cases Brought Under 42 U.S.C. § 1983.” 2012

Apart from the concerns that (I) the Court is affording law enforcement officers too much protection from liability and (2) the Court is splitting hairs to distinguish Graham's fact-based protection from Harlow's law-based protection, 5 4 this paper's main criticism of Saucier is that **the Court offered no clear guidance concerning the "appropriate level of specificity" needed for a law to be clearly established.** Subsequent cases have only made it less clear. For instance, in Hope v. Pelzer, **a prisoner brought a civil rights lawsuit against three prison guards for cruel and unusual punishment** under the Eighth Amendment. 55 After getting into a fight with one of the guards, **the prisoner was chained to a hitching post at both arms. 5 r' The guards removed the prisoner's shirt and let him bake under the sun for seven hours. 57 He was given no bathroom breaks, only two drinks of water, and was taunted by the guards throughout the ordeal. 5 x The Eleventh Circuit held that although the prisoner's Eighth Amendment rights were clearly violated, the guards were entitled to qualified immunity because the law concerning the use of the hitching post was not clearly established**. 59 Although it could be "inferred" from "analogous" case law that the guards' conduct was illegal,60 **the Eleventh Circuit held that the case law needed to have "materially similar"** facts in order to be considered clearly established law. 61 In other words, **to overcome qualified immunity, the prisoner would have had to cite case law that prohibited a prison guard from chaining a prisoner to a hitching post for seven hours, without a shirt, without bathroom breaks, without water, and while taunting him**. 62 This was how many circuit courts interpreted Saucier,rll but the Supreme Court rejected such a narrow approach.M The Court adopted a "fair warning" standard in Hope, and held that prior case law did not need to have materially similar f~1cts to serve as the basis for clearly established law.1 ' 5 In fact, no factual similarity was needed at all-"officials can still be on notice that their conduct violates [clearly] established law even in novel factual circumstances."66 As long as the current "state of the law" gave the officer "fair warning" that the conduct was unlawful, the officer was not entitled to qualified immunity.67 This holding greatly relaxed the standard that was purportedly announced in Saucier, making it "much easier for civil rights plaintiffs" to overcome qualified immunity. 68 Up until the time Hope was decided, cases were routinely being dismissed due to the lack of materially similar cascs.m Though Hope was an Eighth Amendment case and not a Fourth Amendment case, one would expect Hope to apply fully to excessive force cases; after all, cruel and unusual punishment is not too far removed from the use of excessive force.

#### And, inmates are coerced to the point of suicide --- qualified immunity puts the onus on the prisoners instead of the guards responsible for their torture.

**Gilna 15** Derek “Supreme Court Rules Qualified Immunity Shields Prison Officials from Suicide Claim.” Prison Legal News Human Rights. July 2015

In what can only be considered **a step backward for holding corrections officials accountable for** the **preventable suicide of prisoners** in their custody, **the U.S.** Supreme Court **has held that** the doctrine of **qualified immunity shields officials from** **liability in a case involving a prisoner who killed himself**. As a result, a federal lawsuit filed by the family of Christopher Barkes, who allegedly committed suicide due to an inadequate intake screening, was dismissed. According to the Supreme Court, there was no question that Barkes was “a troubled man with a long history of mental health and substance abuse problems.” Following his arrest for probation violations in 2004, he was confined at the Howard R. Young Correctional Institution in Delaware, where an intake evaluation was performed that included a brief mental health screening. The nurse performing the screening, who was employed by a private contractor, used a form approved by the National Commission on Correctional Health Care (NCCHC). The form covered 17 suicide risk factors and required immediate suicide countermeasures if 8 or more factors were reported. The nurse found only two indicators of suicidal tendencies, and thus failed to alert prison staff to the possibility of Barkes harming himself. Shortly after his arrival at the facility, Barkes called his wife and told her he was going to commit suicide; she did not notify anyone at the prison. The next day he hanged himself in his cell. The lawsuit filed by Barkes’ family raised claims under 42 U.S.C. § 1983 and alleged that the correctional institution and its employees had violated Barkes’ civil rights; the suit further alleged that **prison officials were not following updated NCCHC suicide prevention standards**, as the intake screening form they used had been developed in 1997. The defendants’ motions to dismiss were denied and a divided panel of the Third Circuit Court of Appeals affirmed, holding that in light of the many facts in dispute, summary judgment was inappropriate and qualified immunity did not protect the defendants from liability, as there was a clearly established right to “the proper implementation of adequate suicide prevention protocols.” The Supreme Court granted cert and reversed on June 1, 2015, **finding that qualified immunity applied in this case and the clearly established right** relied upon by the Third Circuit **did not exist**: “To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right.” The Court continued, “When properly applied [qualified immunity] protects all but the plainly incompetent or those who knowingly violate the law.” The Court was not persuaded that Third Circuit precedent had put the defendants on notice of a requirement for proper suicide screening protocols. “In short, even **if the Institution’s suicide screening and prevention measures contained the shortcomings that respondents allege, no precedent on the books** in November 2004 [when Barkes died] **would have made clear to petitioners that they were overseeing a system that violated the Constitution**. Because, at the very least, petitioners were not contravening clearly established law, they are entitled to qualified immunity.” Accordingly, the judgment of the Third Circuit was reversed. See: Taylor v. Barkes, 135 S.Ct. 2042 (2015).

#### Qualified immunity makes it impossible for inmates to sue prison guards for cruel and unusual punishment. This erodes the little power inmates have to challenge prison conditions and destroys prison accountability – only court action can solve. Repealing the Carrigan decision takes away the ‘clearly established’ clause, allowing for more leverage

**Bell 99** Cheryl Bell Martha Coven John Cronan Christian Garza Janet Guggemos 1999 "Rape and Sexual Misconduct in the Prison System: Analyzing America 's Most "Open" Secret" Yale Law and Policy Review digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1385&context=ylpr

**A**nother seemingly impervious **barrier that inmates face when bringing claims of cruel and unusual punishment is** the one presented by the modern interpretation of **the** **qualified immunity defense**. Historically in prisoners' rights cases, the qualified immunity standard effectively balanced government's administrative interests in keeping the "fear of being sued ... from unduly hampering official decisionmaking"' 8 against an individual's interests in protecting her/his constitutional rights. However, **the** recent **decision** **by the Carrigan court** has severely compromised this balance by **plac[ed]**ing **an** arguably **unrealistic burden upon inmates to prove that there is established law invalidating a prison official's qualified immunity protections**. 189 Before Carrigan, the Court in Scheuer v. Rhodes'9° declared that if an official has no "reasonable grounds for the belief formed at the time and in light of all the circumstances, coupled with good-faith belief," her/his claim to a qualified-immunity defense would fail.' 91 Further, in Wood v. Strickland,'92 the Court tweaked its reasoning to establish that qualified immunity depended on whether an official knew or reasonably should have known that s/he violated a constitutional right. 93 After Wood, a series of cases seemed to reiterate the Court's commitment to balancing the scale equitably by giving as much weight to individual inmates' rights as to government officials' rights. Procunier v. Navarette 94 extended Wood's high standards, helping define a legitimate qualified immunity defense for prison S • 195officials being sued under section 1983 by inmates. Knell v. Bensinger imposed personal liability upon those prison officials who disregarded the constitutional rights of inmates and the clearly established legal developments in inmates' rights. During this period (the late 1960s through the early 1980s), individual inmates won a fair number of judicial victories. They made several successful section 1983 claims against prison officials,'96 and the courts began setting limits on how far claims of ignorance by prison officials could go unchallenged.'9 The debilitating impact of Carrigan on inmates' claims of rape and sexual misconduct is clear. **Before Carrigan, individual inmates could make viable** Eighth Amendment and section 1983 **claims based** largely **on meeting the first "objectively inhumane conditions" prong** set forth in Farmer v. Brennan, **because the Court had** already **outlined** some **circum-stances under which the subjective "state of mind" prong would necessarily fail**. Also, simple legislative reforms9 ' could have worked to buttress an inmate's claims against a qualified immunity defense. However, **the Court has** all but **upset the equity** it had been trying to establish in its previous prisoners' rights cases, **by creating a qualified immunity defense that functions like absolute immunity**. **Even if an inmate can decisively prove the first prong** of the Farmer test, **without law that limits a prison official's qualified immunity defense, an inmate can never successfully meet the second prong** of the Farmer test. In the interest of justice, **the Court would do well to reassess its current Carrigan standard and bring it more in line with** the **precedent** it set in its earlier cases-thus **bringing individual inmates' rights back in balance with those of government officials**. C. Following the Ladies' Lead The final reform that the courts should consider taking to ameliorate the serious concern of rape and sexual misconduct in prisons is less a response to Farmer v. Brennan than it is a general response to the gender stratification of current judicial rulings on this issue. The courts have displayed a willingness to recognize the privacy rights of female inmates who are victims of sexual misconduct although they are not yet willing to extend that recognition to male inmates who are victimized in this way. A likely reason for the courts' reluctance to make such a concession may simply be that it is easier for most members of our society, judges included, to view rape as a woman's burden and not a man's. The fact remains, however, that while this may most often be the case in "free society," it is clearly not the case in prisons. To reduce sexual abuse in all correctional facilities alike, the reform ideas that originated in Women's Prisoners also should be applied in male correctional facilities.'9 Male inmates also have a strong privacy claim to be free from physical assault by other inmates and male guards.Likewise, flagrant sexual harassment and inadequate educational and healthrelated services are omnipresent in men's correctional facilities and should, therefore, also strengthen men's claims for declaratory and injunctive relief. Also, the sexual harassment definition that Judge Green provided, if modified to recognize harassment among inmates, can be a very powerful tool for male inmates as well. Finally, the policy charges that the Women's Prisoners remedial order stipulated-establishing a telephone hotline, having prison officials write and follow a sexual harassment policy, and instituting an Inmate Grievance Procedure and sexual harassment training for prison employees-are applicable to male correctional facilities. **One of the most powerful tools we may have in redressing this problem may come from** simply **extending equitable rights** to male as well as female inmates. V. CONCLUSION Every day, thousands of human beings are subjected to or threatened with rape and sexual misconduct while in prison. This may be a "secret" that everybody knows, but it is certainly not one that we as a society can afford to keep. **By continuing to neglect the plight of prisoners in this regard, we jeopardize the health and safety of prisoners, as well as that of the communities into which prisoners will reintegrate after their release from prison**. Although the courts have extended some rights to such prisoners, most significantly through the interpretation of Eighth Amendment protections in the Farmer v. Brennan Supreme Court decision, they have stopped short of doing all that they can to help rectify the problem. **By reassessing the deliberate indifference and qualified immunity standards used in Farmer**, and by applying to male prisoners some of the legal innovations made in the Women's Prisoners decision, **the courts can substantially advance the goal of eradicating the problem of rape and sexual misconduct in prisons.**

#### Plan solves – supreme court ruling will spill over to lower courts and allows more cases to go to trial, showing a better support for citizens’ constitutional rights and more accountability.

**De Stefan 16** Lindsey De Stefan 2017 Law School Student Scholarship "“No Man Is Above the Law and No Man Is Below It:” How Qualified Immunity Reform Could Create Accountability and Curb Widespread Police Misconduct" scholarship.shu.edu/cgi/viewcontent.cgi?article=1861&context=student\_scholarship

**Altering the qualified immunity doctrine is a**n excellent **way to** begin the path to **restor[e]**ing **trust by establishing** a much-needed sense of **accountability**. **Civil remedies are a good jumping off point because**, as repeated failures to indict officers—even in the face of video footage—have demonstrated, **accountability via the criminal law is a far-off possibility**, if it is possible at all. **Prosecutors are** generally **disinclined to bring charges** against law enforcement officers, 140 **and grand juries are** equally as **hesitant to indict them**.141 Independent investigations, as suggested by the Task Force, are an excellent idea, but establishing a feasible system nationwide would take time. On the other hand, **Supreme Court amendment** of the stringent immunity afforded to police officers **could take effect relatively quickly**. Of course, this is easier said than done. The Court has increasingly enlarged the immunity afforded to police officers in its recent decisions, and any 180-degree turnaround would likely require a change in Court composition. But **the** current **Court can** nevertheless begin tofirm up qualified immunity doctrine by simply **provid[e]**ing **more guidance and clarification**, thereby **enhancing accountability and reaffirming trust between law enforcement and their** respective **communities**. The concept of a clearly established right is, in many ways, a problem that requires solving. A substantial number of cases are disposed of on the premise that a right was not “clearly established”—yet lower courts have struggled for years with what those words actually mean. Arguably, then, at least some **officers are escaping liability** simply **because of the Court’s** repeated **failures to establish consistency** in its qualified immunity jurisprudence. But **if the Court used qualified immunity opinions to demonstrate what qualifies as a clearly established right** by meticulously outlining its reasoning in answering whether a set of facts implicates such a right, **the Court could alleviate** some **confusion**. In other words, rather than taking cases simply to overturn the lower courts’ denial of immunity, **it could take cases to affirm those denials or**, alternatively, **to reverse lower courts’ grant of immunity**. By so doing, **the Court** can give examples of what constitutes a right that is “sufficiently clear that every reasonable official would have understood that what he is doing violates that right,”142 and **can** **give lower courts** somewhat of **a guide to follow**. By elucidating the contours of the clearly established right, the Court would alleviate some of the confusion of lower courts and ensure that they are in fact applying that part of the test properly. **Proper application** of this prong directly **promotes accountability**, **as the public can rest assured that**, at least in that regard, **cases are not being disposed of based** merely **on** perplexity and **uncertainty**. Moreover, **increased confidence about the clearly established prong could foster a willingness to take on the second part of the test and**, in so doing, **advance the development of constitutional law and clarify further constitutional rights**. The Court could also accept that its attempts at a general standard for all classes of officials that are not otherwise entitled to absolute immunity has been problematic and hugely unsuccessful. Though **the** Court apparently fears “complicating” **qualified immunity**, the **doctrine is** quite **complicated as is**, **and adopting more particularized classes of officials with different standards of immunity would not only assist lower courts in properly analyzing immunity, but would promote justice in constitutional tort litigation.** For example, the Court could classify officials based on the approximate number of people with whom they come in contact, so to speak, and that might therefore bring civil suits against them. A governor, for example, could theoretically face a lawsuit from any resident of the state, and would thus be afforded more stringent protection—much like the standard afforded to all officials now. But law enforcement officers, who come in contact with only the residents of one town, city, or perhaps county, risk possible suits from a much smaller pool of people. The threat of litigation would therefore be much less crippling on governmental function, and immunity protection need not be so rigorous. In the case of allegations of Fourth Amendment violations, in light of the already-existing reasonableness standard, immunity may be inappropriate altogether. In addition, the Court could do its proverbial homework and take notice of the widespread indemnification of officers that often results in a complete absence of financial or employmentrelated consequences for law enforcement. If the Court stopped relying on its own intuition, and instead came to grip with the facts, it would likely realize that it has been overzealous in protecting low-level officers, and be inclined to alter course somewhat. By beginning to mend the qualified immunity doctrine in these ways, **the Court will allow more civil suits for the vindication of constitutional rights to succeed**. **This will help to reduce the public mentality**—strengthened by recent events—**that cops get away with everything**, in every regard. Civil suits avoid subjecting law enforcement to any criminal liability that, because of recent events, many laypersons believe is warranted. While this may be true in select circumstances, reality demonstrates that criminal charges are highly unlikely to stick against a police officer. But allowing more civil suits to go forward **will serve as an important reminder to both civilians and law enforcement that the police are not above the** **law**, and that they are held accountable for their wrongdoings. In turn, **this accountability will begin to heal the relationship between law enforcement and communities** by serving as the first step on what will surely be a long path to rebuilding the trust that is so crucial. **By** adopting different immunity standards for high-level and low-level officials, clarifying the vagueness surrounding the definition of a “clearly established” right, and acknowledging the real-world effects of indemnification, the Court can begin to repair some of the substantial flaws in its qualified immunity jurisprudence. As it does, it will permit more constitutional tort suits to succeed, thereby fostering law enforcement accountability. **Because criminal liability is nearly impossible** as a practical matter, **and because strategies like improving police training and recruiting tactics will likely take years to effectively implement, civil suits are the** (relatively) **fastest way to demonstrate** to the country **that our officers are** our guardians and that they are **accountable** to us. It is thus the most immediate way to rebuild trust and begin healing the citizenpolice relationship.

#### Second is sexual assault – Current qualified immunity precedence erodes the ability for inmates to brings charges of sexual assault against prison guards – the right to protection from sexual abuse is not considered “clearly established”, which means it goes on unpunished in prisons. the ‘clearly established’ aspect means prison guards can get away with sexual abuse. The plan solves by repealing the ‘clearly unlawful’ framework.

**Buchanan 07** Buchanan, Kim Shayo. “Impunity: Sexual Abuse in Women’s Prisons.” Harvard University 2007

The failure of many correctional systems to adequately address sexual abuse through internal grievance and employment policies demonstrates the need for external accountability. “**Prisons would have a greater stake in enforcing prison policies if they were held liable for the actions of correctional officers**.”242 However, 42 U.S.C. § 1983, which creates a cause of action for constitutional torts, and the Monell doctrine243 immunize government authorities, including prisons and jails, against vicarious liability. Under Monell, institutional liability is available only if the prisoner can prove that the guard’s unconstitutional conduct resulted from a governmental custom, policy, rule, or practice.244 If the injury resulted from failure to train (a claim that could foreseeably arise in sexual abuse claims), the standard for liability is even higher: “deliberate indifference.”245 It seems likely that such customs, practices, and indifference prevail in prisons where custodial sexual abuse is widespread. However it would be exceedingly difªcult for an unrepresented prisoner to plead such a case properly, much less obtain the appropriate evidence in the discovery process. The courts’ interpretation of Section 1983 limits supervisory liability even further. The Eleventh Amendment prohibits plaintiffs from naming either state agencies or state employees in their ofªcial capacities as defendants to Section 1983 actions.246 Moreover, under Section 1983, supervisory liability may not rely on the theory of vicarious liability and is only available if the supervisor was personally involved in the deprivation of the plaintiff’s constitutional rights.247 This narrow interpretation of “personal involvement” forces plaintiffs to attempt to assign personal responsibility to individual supervisors for systemic failures such as inadequate training, supervision, or investigation or the existence of a climate of toleration of sexual abuse.248 Even where a prisoner can establish that an institutional policy or custom facilitated her sexual abuse, a supervisor cannot be held liable unless the plaintiff can prove that the supervisor was personally responsible for it.249 Meanwhile, a claim against an individual guard is unlikely to result in any compensation for the abused prisoner. Governments usually indemnify their employees when they are sued.250 However, the exception to this rule substantially affects custodial sexual abuse claims: the government is likely to refuse to indemnify “ºamboyantly bad actors” who commit intentional torts in the course of their employment, especially those torts that result in criminal prosecution.251 The New York Department of Corrections, for example, will generally refuse to indemnify a guard if physical proof or a DNA sample is available. 252 In such cases, the only pocket available to satisfy a prisoner’s civil judgment would be that of the guard, who is unlikely to be wealthy and thus may well be judgment proof. **Prison guards** and institutions also **enjoy qualifed immunity for conduct that is not clearly unlawful**:253 **prison guards and officials cannot be held liable for torts committed in the course of their employment unless their conduct violates “clearly established statutory or constitutional rights of which a reasonable person would have known” under the law of that time**.254 Unfortunately, **the law does not clearly prohibit all** forms of custodial **sexual abuse**. Although the illegality of forcible rape is sufªciently clear to overcome qualiªed immunity,255 it **is not firmly established that** other forms of sexual abuse, such as **sexual harassment and sexual threats**, **are** **clearly unlawful**.256 **Courts have held that many forms of sexual abuse** short of rape, such as sexual harassment without touching257 and sexual activity to which the guard alleges the prisoner consented,258 **are not clearly unlawful**. In states that have not criminalized all sexual contact between guards and prisoners, even sexual touching and quid pro quo sexual exploitation short of rape may not be clearly unlawful. **Qualified immunity may particularly impede allegations of institutional failure to investigate sexual abuse**, as it is not clear how cursory an investigation must be before it will be found clearly unlawful.259 **The usual justifications for** the application of **qualified immunity** to government actors **do not fit the context of** civil claims for **custodial sexual abuse**. First, an important justiªcation for the qualiªed immunity rule is to avoid “unwarranted timidity,”260 or the fear that “government ofªcials who are exposed to money damages for the full costs of their constitutional violations will become overly cautious or quiescent, reducing their activity to suboptimal levels and shying away from socially beneªcial risks.”261 This concern is irrelevant within the context of sexual contact between prisoners and guards, as there is no optimal level of custodial sex which the threat of liability might overdeter. A second, related rationale for qualiªed immunity is that governmental institutions must be spared the burden of litigation.262 The Supreme Court has held that “public ofªcers require this protection to shield them from undue interference with their duties and from potentially disabling threats of liability.”263 It has cautioned that “broad-ranging discovery and the deposing of numerous persons, including an ofªcial’s professional colleagues . . . can be peculiarly disruptive of government.”264 This justiªcation, like the discredited doctrine of marital privacy, seems to rest on the notion that the integrity of an institution requires that it be shielded from civil accountability for abuses committed under its authority. Common law courts justiªed noninterference in domestic violence cases by suggesting that “it is easier for an altruistic wife to forgive her husband’s impulsive violence than it is for a husband to suffer the loss of authority entailed in having his exercise of prerogative reviewed by public authorities.”265 Similarly, **by applying qualified immunity to prisoners’ claims, courts apparently calculate that the inconvenience to prison authorities involved in defending inmate lawsuits outweighs the harm caused to prisoners by their toleration of systematic sexual abuse**. Judicial concern that prisoner litigation (or the fear of it) will result in governmental paralysis is overblown.266 There is no compelling reason to believe that our legal system must abide by a strict no-vicarious-liability rule. For instance, Canadian statutory and judge-made law allow for governmental vicarious liability.267 Finally, if sexual abuse by guards in prison has become so common that it would give rise to a deluge of cases whose defense would require great institutional time and expense, it would seem that the ºood of litigation is urgently needed to bring about reform.

#### Limiting qualified immunity will create a flood of litigation that disrupts the current legal flow that the prison industrial complex relies on and spurs reform.

**Buchanan 2** Buchanan, Kim Shayo. “Impunity: Sexual Abuse in Women’s Prisons.” Harvard University 2007

**A** second, related **rationale for qualified immunity is that** govern- mental **institutions must be spared the burden of litigation**. 26 2 The Supreme Court has held that "public officers require this protection to shield them from undue interference with their duties and from potentially disabling threats of liability." It has cautioned **that** "broad-ranging discovery and the deposing of **numerous persons**, including an official's profes- sional colleagues ... **can be peculiarly disruptive** of government. ' '261 **This** justification, like the discredited doctrine of marital privacy, seems to **rest on the notion that the integrity of an institution requires that it be shielded from civil accountability for abuses committed under its authority**. Common law courts justified noninterference in domestic vio- lence cases by suggesting that "it is easier for an altruistic wife to forgive her husband's impulsive violence than it is for a husband to suffer the loss of authority entailed in having his exercise of prerogative reviewed by pub- lic authorities. '265 Similarly, **by applying qualified immunity to prisoners' claims, courts apparently calculate that the inconvenience to prison authorities involved in defending inmate lawsuits outweighs the harm caused to prisoners by their toleration of systematic sexual abuse**. Judicial concern that prisoner litigation (or the fear of it) will result in governmental paralysis is overblown. 66 **There is no compelling reason to believe that our legal system must abide by a strict no-vicarious-liability rule**. For instance, **Canadian statutory and judge-made law allow for gov- ernmental vicarious liability**.2 67 Finally, **if sexual abuse by guards in prison has become so common that it would give rise to a deluge of cases whose defense would require great institutional time and expense, it would seem that the flood of litigation is urgently needed to bring about reform.**

#### And, Current apathetic attitude towards sexual assault in prison normalizes violence and abuse – the 1AC advocacy affirms the value of prisoners and changes the cultural attitude.

**Bruenig 15[[3]](#footnote-3)**

It is hard to imagine another genre in which rape is just a transitional necessity, one of the hurdles a character must navigate to grow. But **prison [sexual assault]** rape **has** that **strange valence in popular culture**, and not purely in fictional works. Rape **[sexual assault] is part of forcing prisoners to change, it’s what makes learning your lesson in prison scary**, and scary prisons are what keep bad people in line. Beyond Scared Straight is A&E’s reality show based on at-risk-teen behavioral modification. The goal is to expose youths who are at risk for incarceration to what prison life is like in order to deter future delinquency. In a 2011 episode, a former inmate forces a 14-year-old to pat Kool-Aid powder onto his lips and then lunges forward to kiss him, intimating in frantic yelling that this routine would conclude in his sexual exploitation in prison. Interviewed at the end of the episode, the 14-year-old admits he was made uncomfortable by the advance, but still claims the former inmate “doesn’t own [him]”; at the Huffington Post, this was tsk-tsked as evidence “he still doesn’t completely get what a different world prison can be.” Sexual exploitation in prison has its uses, in other words, and one of them is instructive. Treatment of prison rape in ordinary television is often, with a few exceptions, bizarrely comical. Law & Order: Special Victims Unit, the iteration of the Law & Order franchise that made its fortune on rape theater, deploys the trope of prison rape with depressing regularity. In a surreal episode involving wild-animal smuggling, Christopher Meloni and Ice-T menace a wannabe hip-hop mogul during his interrogation by rolling dice and suggesting his cellmates will adopt the same procedure to determine the course of his rape. The suspect relents. The same scenario pans out in so many procedural cop dramas, with all due allusions to cellies named Bubba and pretty-boys-like-you. Even The X-Files had a go in a glibly comedic episode, wherein Detective Scully is urged to perjure herself lest she wind up with a Gertrude Stein–reading cellmate called “Large Marge.” The arrests of celebrities like Lindsay Lohan and Paris Hilton produce fantasies disguised as news. Fox News reported in 2010 that “lesbian prison gangs” were itching to get their hands on Lohan; whether the “report” was filed under “entertainment” because of the actress or the feverishly implied rape is unclear. **The logic perpetuated** by ongoing ease with prison rape **is that certain bad people in particular bad settings either deserve sexual assault or do not deserve protection from it**. That **prison** simply **is** a site **where [sexual assault]** rape **occurs is given as a deterrent and**, in the event that an offender is not deterred, **implied to be what they had coming all along**. But the notion that prisoners who are raped should have behaved better to be less deserving is the apotheosis of the “asking for it” or “had it coming” arguments so commonly employed to dismiss victims of rape in the free population. Some crimes are so egregiously heinous that knee-jerk, visceral reactions tend toward the violent, but **when we codify primal impulse into popular consensus, we wind up in agreement that [sexual assault]** rape **is sometimes an appropriate punishment**. **Hatred or indifference to people in prison**, therefore, **affirms a particularly poisonous view of [sexual assault]** rape itself: **that it has its place in the order of things**, especially where badly behaved people are concerned. So long as some 200,000 people are sexually violated in detention centers annually, **rape** **will never** really **retreat into the realm of the unthinkable, no matter how many perpetrators we turn into victims**. \* \* \* And what of those victims of sexual abuse behind bars? Here again, the poisonous effects of prison rape slip the grip of the facilities themselves. While some inmates remain in custody until they die, the majority return at some point to society at large. Currently, reintegration and re-entry programs are generally structured around employment rather than psychologically adjusting to the effects of prison itself, and there is no standardized reintegration program with resources freely available to all former inmates. Bryan Stevenson, the attorney-cum-human rights advocate who founded and directs the Equal Justice Initiative, has spoken about the harm done to communities when inmates return home having suffered severe trauma, noting in an NPR interview that “we can’t continue to have a system of justice defined by error and unfairness and tolerate racial bias and bias against the poor and not confront what we are doing to individuals and to families and to communities and to neighborhoods.” So it goes as well for sexual abuse: What sort of stable sexual culture can we hope to produce in communities already unduly affected by the carceral system when former inmates are re-introduced without any source of treatment for sexual trauma? A 2004 study authored by Sheryl Pimlott Kubiak of Wayne State University found that the effects of post-traumatic stress disorder acquired in prison can compromise rehabilitation as former inmates re-enter their communities. Kubiak found that inmates treated for substance abuse struggled with post-prison legal problems and drug relapse in proportion to diagnoses of PTSD. Prison can, of course, be traumatic for a number of reasons, but as Kubiak notes, “while [sexual assault] may be glibly referred to as part of the sentence…it is rarely attended to by clinical professionals during incarceration, or in planning reintegration services.” **The echoes of sexual trauma inflicted in prison**, therefore, **can interfere with former inmates’ efforts to put their lives back together post-prison, and put them at risk for further contact with the correctional system**. **Sexual assault in prison**, in other words, **has the destructive power to create a cycle of abuse that extends outside prison walls**. Kubiak’s observation that few programs for inmates or former inmates attend to the ramifications of sexual assault in prison is also notable. In a 2008 article, James Radford, an AIDS activist and attorney, noted that **the stigma of prison sexual assault forms a serious barrier to HIV and AIDS treatment for inmates and former inmates**. “Rape itself stigmatizes the individual who is now in fear of yet another stigmatizing marker, an HIV diagnosis,” Radford observed of sexual assault victims in prison who elect not to seek treatment, noting that “should the victim come forward, he would receive a drug regimen that inhibits the spread of HIV as well as tested for other STDs.” Due to the stigma of victimization, inmates who have been sexually assaulted may choose not to seek treatment, which (in the case of HIV) puts them at risk for missing a critical period for medical intervention. When these inmates who have contracted HIV and AIDS via sexual assault re-enter the community without having been tested or treated, they put future sex partners at risk for the spread of HIV, in addition to going without adequate healthcare themselves. It is hard to imagine strong intimate relationships—the sort that anchor many of us in our surrounding communities—developing under conditions like these, where trauma and illness worsen under the burdens of stigma and stress. Hereagain, prison sexual assault poses a risk to the web of relations former inmates enter into when they leave the confines of penitentiaries. **The ubiquity of [sexual assault]** rape **in prisons has led to a ubiquity of prison [sexual assault]** rape **nonchalance in popular culture, which promotes a [sexual assault**] rape**-as-punishment framework and normalizes [sexual assault]** rape **itself**. There is no other element of carceral life so frequently referenced in television, film, stand-up comedy routines, sleazy gossip rag headlines and second-rate porn scenarios. Meanwhile, despite the efforts of PREA, prison rape numbers have shown little sign of changing; drops have generally corresponded to overall drops in prison population, which isn’t much of a trend to hang one’s hopes on: the United States still has the highest incarceration rate in the world, a distinction we have held since 2002, a year before PREA was enacted. Prison overcrowding, loose oversight and an intensely punitive (as opposed to therapeutic or rehabilitative) carceral system are certainly all tied up in the eager habits of US incarceration, and likewise they all seem to be contributing factors in the prevalence of US prison rape. Eliminating prison sexual abuse will undoubtedly require a total system overhaul, which is necessary on its own merits, and for all our sake

#### And, Any avoidance of engagement in the AC or overarching claims about prisons is synonymous with status quo pedagogy that excludes specific accounts of prison violence.

**Loyd 11** Dr. Jenna M. Loyd, “American Exceptionalism, Abolition and the Possibilities for Nonkilling Futures,” Nonkilling Geography

The relative invisibility **of domestic state violence** vis-à-vis war constrains the imagination and imperative **for building just, free, and peaceful futures, internationally and domestically**. Domestic practices of state violence (namely policing and **imprisonment**) are frequently treated as inherently more legitimate than war-making because these practices are founded in popular sovereignty. Yet, these **institutions reproduce racial, gender, class, and sexual relations of hierarchy and domination that contribute to family separation, community fragmentation, labor exploitation and premature death**. Building a **nonkilling future**, thus, means challenging the state’s organization for violence that are practiced domestically in the form of defense (military-industrial complex) and in the form of prisons and policing as the “answer” to social and economic problems ranging from poverty, to boisterous youth, to human migration, and drug use (Braz, 2008; Gilmore and Gilmore, 2008). It takes sustained ideological work to contain “war” as the only form of state violence and to contain the good sense that war’s harms cannot be confined to weapons, neatly demarcated battlefields, and declarations of wars’ conclusions. Building critiques of and movements against state violence means confronting hegemonic frames that understand state violence as exceptional, rather than as normal practices structuring both international relations and domestic governance. It means asking why denunciations of the “war at home” sound hyperbolic to some Americans. It means asking in what ways domestic practices of state violence are practiced elsewhere and international practices are imported. Such cross-boundary traffic in practices (and personnel) of policing, imprisonment and war-making are important for showing that the lines between foreign and domestic, war and peace, civilian and military are constantly blurred. This in turn highlights the tremendous ideological work that goes into maintaining these boundaries, and the material consequences such geographical imaginations have on people’s lives and the places in which they live. This is not to say that the war at home and war abroad are the same or necessarily have the same intensity. Rather it is to trace the frame of exceptionalism that structures the relations between these places in ways that facilitate violence in both places. As we have seen, **the invisibility and naturalization of** state violence in the form of **the prison is** one of **the most overlooked sites of** American exceptionalism, critiques **of US state violence**, and of antiwar efforts. **For precisely this reason, attentions should be placed** **on challenging the prison regime** as one aspect of building nonkilling futures. For this historical moment, Dylan Rodríguez argues that **undoing the naturalization** of such commonplace violence, **centers squarely on an** abolitionist pedagogy **that works “against the assumptive necessity, integrity, and taken-for-grantedness of prisons**, policing, **and the normalized state violence they reproduce**” (2010: 9). **Dismantling prisons is about dismantling relations of white supremacy, heteropatriarchy and economic exploitation that undermine the possibilities for freedom and human flourishing.** Prison abolition has an expansive antiviolence imperative that necessarily demands an end to connected practices of war, colonial dispossession, and imperial rule. Abolitionist imaginations challenge violent suppression of human freedom and offer important visions for forging links among different sectors of anti-violence organizing. We might look for example to the nineteenth century international slavery abolition movement or more recently to the nonaligned movement of (formerly) colonized nations, which regarded ending the Cold War as a condition for political autonomy and fulfilling human needs (Prashad 2007). Likewise, for civil rights organizers in the US South, the abolition of Cold War annihilation was predicated on domestic peace, which could only be won through freedom, that is overthrowing the legal and extralegal relations of white supremacy (Loyd, 2011). Creating the possibilities for nonviolent resolution of social conflict is a recognized aim of antiwar or peace organizing.

# 1AR Overview

The Role of the Ballot is to resist the prison industrial complex – Extend Rodriguez 10 that the prison system reproduces itself through pedagogical systems because it is made invisible and neutral

Extend Dillon 13 – Prisons are not just concrete, but concrete structures of knowledge – they permeate our modes of thought to influence our ideas of criminality – the 1AC is an orientation away from this because we humanize inmates

First is Cruel and Unusual Punishment –

Sheng 12 - Prison officers are able to get away with torture against prisoners due to current qualified immunity loopholes – theres no precedent so very specific cases it gives the example of a prison guard tying a prisoner to a hitching post and taunting him – but because there was no case prior to this that was the exact details it was not clearly established

**Bell 99** – Qualified immunity makes it impossible for inmates to sue – repealing the Carrigan decision is key because it takes away the ‘clearly established’ clause, with allows for more leverage.

**De Stefan 16** –Plan Solves – Supreme Court ruling will allow for more clarity for lower courts and more cases to go to trial, which will show a better support for citizens’ constitutional rights and an end to structural violence.

Second, sexual assault

**Buchanan 07** – Current qualified immunity erodes the ability for inmates to bring charges of sexual assault against prison guards – the right to protection from sexual abuse is not “clearly established”. The plan solves by repealing the ‘clearly unlawful’ framework.

**Buchanan 2** – Limiting qualified immunity will lead to a flood of litigation that catalyzes reform, the plan disrupts the legal flows the prison industrial complex relies on.

**Loyd 11** – Avoiding engaging in the 1AC or overarching claims about prisons reproduces pedagogy that reifies the prison system – focus on the 1AC’s particular accounts of violence.

## Radical O/V

Prisons are more than the concrete walls that surrounds the inmates it a particular form of knowledge that structures the ways in which spaces operates. That’s **dillion**. This means we have a method to interrogate the ways in which oppressive dynamics operate and morph. This is key to survival for oppressed bodies

The plan is an imagination of flipping of the script- refusal of the very nature of power between the prison guards and the prisoner- The impossible demand that the prison guard may face redress for its libidinal control.

Impact overview

The forms of **sexualized violence** that are implicated against the prison of color is a prerequisite to any neg argument – because forms of psychological violence that needs to be addressed before we can question moral questions – sequencing DA

The plan is an imagination of flipping of the script- refusal of the very nature of power between the prison guards and the prisoner- The impossible demand that the prison guard may face redress for its libidinal control.

Morality bad –

Abstract notions of morality are cohered from structures of liberal humanism

Morality assumes an intellible subject- the black body is constructed as unintelligible in the ways in which it underrides the very prison system. This means that they cannot solve the aff.

Extend the role of the ballot is to resist the prison industrial complex: two net benefits

1. **Implosion** – We make the system implode on itself because it is a knowledge that it does not want to happen. Abolitionist pedagogy occupies space by injecting knowledge that disrupts the ways in which normative knowledge flows and keep the prison invisible because we force the ballot to answer the question of the prison industrial complex. This forces the insertion of this knowledge into the space as an impossible demand – we demand that the ballot could means something that the ballot can’t handle – Rodriguez 10 says that the prison industrial complex sustains itself through liberalism

**challenging** of **common sense** **entails the dismantling of resistance to** **abolitionist** **derive from epistemological of the political imagination that makes liberationist dreams unspeakable**

**the prison is inseparable from** **schooling The prison regime is the** **classroom** **survival is dependent on this pedagogical audacity**

1. **Humanism** – The ways humanism operates is via this knowledge that distributes value and disposability against body lines – Dillon, white rational subjects are the surveillance mechanisms, the only ones who should do the surveillance – western rationalism – we disrupt the ways values are given on certain bodies We need to inject forms of knowledge that refuse the prison system and the liberal human subject.

We don’t focus on expressions of power rather power itself- which is proven by dillion card- it isn’t prisons but the logic of prisons

**Permutation – do both**

We deconstruct the idea of a criminal which is the narrative that sustains social death – call of SCOTUS is not reform but a disruption of the very fabric in which the Supreme Court tries to sustain itself Sudbury 8– **­**We are a refusal of the very language of form

Role of the ballot solves offense because it is about the prison industrial complex- Since prisions are knowledge that means that you subsume analysis of antiblackness bc you refuse humanist modes of knowledge that create the violence in first place

We Don’t focus on expressions of power rather power itself- which is proven by dillion card- it isn’t prisons but the logic of prisons

Read zanotti as the permutation- we analyze legal structures via anti-humanism- we start from the paradigm and use that paradigm to analyze how the totalities explain the particularities- This means we have a policy netbenefit to perm

Perm do both is enough to resolve the link debate

Refuse the very linguistic desires of libidinal economy- Dillion by embracing anti-productive modes of scholarship- solves the k

The plan is an imagination of flipping of the script- refusal of the very nature of power between the prison guards and the prisoner- The impossible demand that the prison guard may face redress for its libidinal control.

Infinite deferral is net benefit to the aff- Reform = forms of political change that is always constructed to prevent liberation movements- Our destabilizing of the western knowledge productions that construct the prison industrial complex allows those forms of resistance to fill the void thus resolving commodification

Aff disrupts libidinal economy which results in capitalist narratives that are used to criminalize people of color

Racial Rape Net benefit: Find modes of healing against antiqueer and antiwoc forms of violence such as rape- Resolving psychological violence from rape is a prior question to the alternative- bc psych violence prevents forms of radical engagement- proves that understanding the particularities is important

WOC and queer POC are way more likely to be raped in prison than white men – we need to understand the particularities of this violence that cannot be solved by the abolition

Black men are already seen as rape-able– when white women or white men assault black men and women they have no political power – particularities question – the alt is dialing up the abstraction to only structural question. Claiming blackness = flesh and first marker of identification, it doesn’t matter if they don’t have a way to solve 1. Intercommunal conflicts within black communities – which fractures coalitions bc no language 2. No ability to resolve the sexual violence – rape-ability is more than a part of civil society but is particularly changed by the affirmative

The impossible imagination of the policing warden who sexually assaults people is help accountable proves perm solvency- we are an impossible demand.

Black subject is below the structure of recognition

# Underview

#### 1. Don’t vote on theory about our AFF being substantively hard to answer --- they punish the AFF for doing good research, which kills fairness since the AFF is expected to find the best args for their side and the neg doesn’t get to choose exactly what ground they want as long as they have ground – their interp justifies shells like “may not read good cards because they’re slightly harder to answer.”

Also –

#### 2. Theory is an RVI for the aff –(a) Time Skew - theory moots the entirety of the aff. The 6-minute 2NR means they can go all in on substance and theory, giving the aff no chance to cover every layer in the 2A. (b) Education – with no RVIs either the debate collapses to theory and no education anyways, or theory is kicked and there’s a huge deficit to topical discussion. But If the neg wins T, reevaluate my offense underneath their interp by dropping the aff advocacy, not the aff offense --- (a) Strat skew: there are tons of bidirectional interps that every aff will violate, a frontlined neg will always win the T debate if they can pick whatever the aff doesn’t do and go hard in the 2N and (b) Substantive discussion: 1AR restart means we still get to discuss the topic instead of only debating theory.

# Frontlines – Turns

# Frontlines - DAs

## A2 Policing

#### Turn – active policing is literally just racism – it increases crime, disrupts individuals’ lives, and destroys their communities

Justice Policy Institute 12 (Justice Policy Institute) “Rethinking The Blues: How We Police In The U.S. And At What Cost,” Justice Policy Institute, May 2012.

**Policymakers are in charge of deciding sentences for offenses, which are meted out by judges, but police are in charge of finding and arresting people who have committed an offense. It follows that with more arrests comes more incarceration. The number of people in prisons and jails in the U.S. increased [two hundred and seventy one]** 271 **percent from 1982 to 2010,** reaching nearly 2.3 million people in 2010.163 The incarceration rate has increased 178 percent from 263 per 100,000 in 1982164 to 731 per 100,000 in 2010.165 **Arrests for minor offenses, including drug offenses, are particularly concerning given the negative effects of putting a person in contact with the justice system**. Just as the number or arrests for drug offenses has increased, the largest area of growth in the prison population is people incarcerated for drug offenses—up 20 percent from 1990 to 2000 alone;166 28 percent of all people entering state prisons in 2008 were convicted of a drug offense.167 In 2008, about 18 percent of people in state prisons and 51 percent of people in federal prisons had drug offenses as their most serious charge.168 **While arrests start a person on a criminal justice track, the penalties have become more punitive, to include mandatory sentences, which cause people to spend years—and even decades—behind bars for minor offenses,** like possession of a small amount of drugs. **These policies are** costing us billions of dollars every year—corrections spending reached $74 billion in 2007 – **disrupting lives and communities, and creating a lifetime of barriers to education, jobs, and housing**.169 Broader systemic reforms are necessary to make sentences less punitive and reverse the criminalization of a myriad of minor behavioral infractions deemed undesirable by lawmakers; however, in the meantime, police can stop feeding this system by not pulling people who pose little risk to public safety into it unnecessarily. Jail has negative effects for people, families, and communities After a person is arrested, they may spend time in jail, which is a detention facility for people pre-trial and for those serving short sentences, usually run by a city or county. Conversely, prisons are run by states and are for people who have been sentenced to serve a year or more. Jails have a harmful effect on many aspects of people’s lives including their physical and mental health, employment, recovery from addiction, family life and relationships with their community. This is especially worrisome since the majority of people in jails experience symptoms of mental illness and many also struggle with substance abuse. Poor treatment of disease170 in jails exacerbates the problem and spreads diseases through the community.171 The constant flow of people through a jail makes it much more likely that a person would contract HIV/AIDS,172 tuberculosis173 and staph infections.174 Incarceration tends to further harm people with mental illness, 175 and often it is behavior related to the person’s mental illness that puts them in jail in the first place.176 Jails are associated with high rates of untreated depression,177 which leads to high rates of suicide.178 Once a person with a mental illness is released from jail, there is often no effort to facilitate the treatment of the illness, including reinstatement of benefits lost while behind bars.179 The jail system is also ill- equipped to help people who have a drug addiction, and especially people who also have a mental health problem.180 Beyond physical and mental well-being, jail also negatively impacts a person’s earning potential,181 educational182 and employment prospects, even 15 years after release from jail.183 It also negatively impacts families. The California Research Bureau estimates that approximately 97,000 children have parents in jail.184 When the person going to jail is a woman, the father is often unlikely able to maintain custody of the child, which can result in the child being displaced; 185 while the child may stay with relatives, many are sent to foster care. Having a family member in jail puts immense levels of stress on the family as a whole, which can further contribute to overall declines in both mental and physical health.186 Jails can affect a person’s relationship with his/her community as well, especially through a person’s ability to secure housing upon release. In one Baltimore survey, 63 percent of people surveyed had owned or rented a home prior to incarceration, but only 29 percent owned or rented a home after release.187 Jails also offer few services which would help a person reenter society when released. Youth are pulled into the justice system by police in schools. A recent report from the journal Pediatrics finds that nearly one in three youth will have been arrested by the time they turn 23.188 One contributing factor to the common occurrence of youth arrests is police and arrests in schools. The presence of police in schools, including school resource officers (SROs), has contributed to the number of youth that come into contact with the juvenile justice system. Fueled by increasingly harsh approaches to student behavior such as “zero tolerance policies,” the past 20 years have seen an expansion in the presence of law enforcement in schools. According to the U.S. Department of Justice, the number of SROs increased 38 percent between 1997 and 2007,189 supported in part by approximately $400 million in federal funds since 2000.190 Some cities, like New York City, employ more officers in schools than many small cities’ entire police force.191 With this rapid increase in the presence of law enforcement, including SROs, in schools, districts from around the country have found that youth are being referred to the justice system at increased rates192 and for minor offenses like disorderly conduct.193 Researchers from the University of Maryland and the University of Massachusetts recently found that in four of the five states included in a study about referrals to the juvenile justice system, schools made up a greater proportion of all referrals to juvenile courts in 2004 than in 1995.194 At the same time, although always relatively rare, incidents of student reported theft and violence are at the lowest rates since 1992.195 Incarceration is an expensive side- effect of arrests. Funding for police has also risen in tandem with the increase in the number of people in prison. From 1982 to 2007, the amount of money spent on policing in the U.S. increased by 445 percent, reaching $104 billion in 2007.196 At the same time, the number of people incarcerated in prisons and jails increased dramatically, reaching 2.3 million people in 2007—a 275 percent increase since 1982.197 A study by the Justice Policy Institute found that, controlling for crime rates, poverty, unemployment and other factors, counties that spend more on policing and the justice system imprison people for drug offenses at higher rates than counties that spend less on law enforcement.198 **This suggests that there is a point of diminishing public safety returns for additional police; that is, they need to arrest people for less serious crimes in order to keep busy, and justify budget requests.** A decrease or redirection of funding away from policing and into social services could decrease the negative effects of arrests and incarceration and create safer communities in the long term. LAW ENFORCEMENT HAS A DISPROPORTIONATE IMPACT ON CERTAIN COMMUNITIES **There are concentrated numbers of arrests in communities of color and low-income communities.** While there is a multiplicity of reasons why this might be, for drug offenses in particular it is not because of ethnic or racial differences in use of drugs. 199 The disproportionate impact of arrest policies on people of color leaves many families and communities without loved ones and has a significant impact on the economy, stability and safety of these communities, especially when these arrests lead to incarceration. In addition, the concentrated impact of policing on lower income communities is exemplified by the criminalization of homelessness, making people who are homeless particularly vulnerable to arrest and involvement in the justice system. **People of color are arrested at much higher rates than whites across most offense categories, with Blacks having the highest rates of arrest across all racial groups for whom data is available. Blacks are arrested at nearly four times the rate of whites for violent offenses**. Racial Profiling In the aftermath of September 11 and increasing suspicion of immigrants, racial profiling in law enforcement, which long was an issue with the African American community, has grown to include Latinos and Muslims. **At the same time, the black community continues to disproportionately experience contacts with police compared to whites. More contacts with police mean the potential for more arrests**. One area where racial profiling is frequently seen is traffic stops. Even though blacks, Latinos and whites are stopped by police at similar rates, blacks are three times as likely to be searched as whites and about two times as likely to be searched as Latinos. Blacks were about twice as likely to be arrested.200 An analysis of data by the ACLU points out that even though blacks and Hispanics are more likely to be searched during traffic stops, they are less likely to have contraband.201 Also under scrutiny are “stop and frisks” of pedestrians, particularly in New York City. This controversial policing strategy involves police stopping someone on the street, and frequently, without any clear evidence of wrongdoing, searching the person. In 2011, 684,330 New Yorkers were stopped by the police; of these, 88 percent (603,268) were totally innocent.202 Although whites in New York City make up 44 percent of the population they accounted for only 9 percent of the stop and frisks compared to **blacks, who make up 26 percent of the population, but 59 percent of the stop and frisks**. 203 Despite being stopped so disproportionately, blacks were less likely to be engaging in a behavior for which they could be arrested. In 2006, 21.5 blacks were stopped for each arrest of a black person as opposed to only 18.2 whites stopped for each white arrest. Cops found guns, drugs, or stolen property on whites about twice as often as they did on black suspects. 204 The policies that are included below are examples of racial profiling, as they are seemingly race-neutral policies that have a disproportionate effect on communities of color, especially black communities. Drug Offenses Even greater disparities are seen in the rate of arrests for drug offenses. Although blacks make up 13 percent of the population, they make up 31 percent of arrests for drug offenses, while whites are 72 percent of the population, but 67 percent of arrests. **Blacks were arrested for drug offenses at three times the rate of whites in 2009. The number of arrests of African Americans for drug possession increased 55 percent from 1993 to 2009; for whites, this increase was 77 percent.**205 While there may be a multiplicity of reasons for these differences, it is not because there are differences in rates of drug use. In 2010, Blacks and whites reported similar rates of illicit drug use within the previous month.206 While increased arrests of whites may more accurately reflect the rates of drug usage in the general population, there are still racial disparities in drug arrests and too many people are arrested and incarcerated for possession of (a small amount) drugs.

#### Turn – lawsuits increase police effectiveness by encouraging accountability and transparency

**Shircore 05**, Mandy Shircore, Associate Lecturer, James Cook University, POLICE LIABILITY FOR NEGLIGENT INVESTIGATIONS: WHEN WILL A DUTY OF CARE ARISE? MANDY SHIRCORE\* DEAKIN LAW REVIEW VOLUME 10 No 2, http://researchonline.jcu.edu.au/4657/1/4657\_Shircore\_2006.pdf p. 26-27

Of greater significance is the compelling argument that **the fear of litigation promotes better policing practices.** 142 As has been noted, **'nothing more effectively focuses the mind and hence improves the quality of decisions by a police officer than the knowledge that the decision may be subject to scrutiny by a court of law.**' 143 Lord **Keith's argument that 'the general sense of public duty which motivates police forces is unlikely to be appreciably reinforced by imposition of such liability' was premised on the basis that police always apply their best endeavours to their public duty, a sentiment, which** as the court acknowledged in Brooks, **is no longer** universally **accepted. Police corruption and misconduct are still of major concern** in Australian police forces **and public dissatisfaction with police complaints mechanisms has been seen as a contributing factor to the increase in civil litigation** against police **and a driving force for demands for greater transparency and accountability.** 144 Concerns of encouraging defensive practices, once raised in an attempt to limit medical negligence claims, have long since been rejected. There is no suggestion that law enforcement, in jurisdictions where Hill public policy grounds have not been imposed to deny a duty, has been detrimentally affected in this way.

## A2 Court Clog

1. Either the DA has no uniqueness or uniqueness overwhelms the link – Court’s have been clogged for years, limiting qualified immunity does not add a significant caseload

Palazzolo 15 Joe Palazzolo “In Federal Courts, the Civil Cases Pile Up.” Wall Street Journal. 2015

Civil suits such as Mr. Porter’s are piling up **in** some of the nation’s **federal courts,** leading to long delays in cases involving Social Security benefits, personal injury and civil rights, among others. More than [three hundred and thirty thousand] 330,000 such cases were pending as of last October—a record—up nearly 20% since 2004, according to the Administrative Office of the United States Courts. The number of cases awaiting resolution for three years or more exceeded 30,000 for the fifth time in the past decade. The federal court for California’s Eastern District, where Mr. Porter filed his suit, has a particularly deep backlog. The number of cases filed per judge, 974 last year, is almost twice the national average. More than 14% of civil cases in that district have been pending for three years or more. The Seventh Amendment to the U.S. Constitution guarantees the right to a jury trial in civil cases. But the Sixth Amendment gives people in criminal cases the right to a “speedy” trial. The upshot: Criminal cases often displace and delay civil disputes, creating a backlog.“Over the years I’ve received several letters from people indicating, ‘Even if I win this case now, my business has failed because of the delay. How is this justice?’ ” said Judge Lawrence J. O’Neill in Fresno, Calif., who sits in the Eastern District. “And the simple answer, which I cannot give them, is this: It is not justice. We know it.” Behind the backlog is a combination of population shifts, politics and a surge in the number of federal prisoners. California’s Eastern District has the same number of full-time judgeships, six, as it did in 1980, when its population was about half what it is now. But only Congress can create new judge positions or move them from slower-growing regions to faster-growing ones, and efforts to do so have run into political resistance. The nomination and Senate approval of federal judges, meanwhile, has become so politicized that some vacancies go unfilled for a year or more. Meantime, the federal prisoner population has ballooned by 55% since 1999, which has led to more lawsuits and petitions by prisoners seeking to undo their convictions or challenge prison conditions. The Judicial Conference of the United States, the policy-making body of the federal judiciary, asked Congress last month to create 68 new judgeships for the U.S. trial courts, including six in California’s Eastern District, which hears cases from a swath of the state that includes Sacramento, Fresno and Bakersfield. In the past, Congress has approved new judgeships but deferred at least some of the posts until the next president takes office. “For some reason we just can’t get there,” said Chief Judge Morrison C. England Jr., the leader of the Eastern District. Some of his cases are nearly a decade old, including a suit that is imperiled because a key witness recently died, he said. The Senate’s pace of judicial confirmations quickened in the second half of 2014, reducing vacancies on federal trial courts to 43, for which 13 nominees are pending. But even if the judiciary were at full strength, places like the Eastern District, which has one vacancy, would see little relief, according to court watchers. The court’s five full-time judges are assisted by three “senior” judges, who are semiretired but often handle full case loads. “**If every single vacancy were filled by this afternoon,** that still wouldn’t be enough **to get the work done**,” said Paul Gordon, senior legislative counsel for People for the American Way, a group advocating for more federal resources for the courts. Mr. Porter, of Ridgecrest, Calif., who was a police officer and later a technician at the Naval Air Weapons Station China Lake for a total of 25 years, was laid off in a force reduction in 1999. After exhausting challenges to his dismissal within the Navy, he filed his federal case in 2007, alleging age discrimination and retaliation for making complaints internally. The Navy denies the allegations. Mr. Porter, now 60, hasn’t found steady work in a decade. He said he ekes by on his savings and worries about how he will manage if his day in court doesn’t materialize soon. “Clearly, justice delayed is justice denied,” he said. U.S. Attorney Benjamin B. Wagner, whose office is defending the Navy against Mr. Porter’s suit, described his employee action as “a case in point” for the need for more judges in the district. “It is a routine employment discrimination suit of the sort that used to conclude in two to three years when our bench was adequately staffed,” Mr. Wagner said. Lawyers and plaintiffs in the Eastern District complain of **judges repeatedly push**ing **out trial dates and taking a year or more to rule on pretrial motions due to their packed dockets**. “How long people are willing to work under those circumstances is a real question mark,” Judge O’Neill said, adding that his typical workday lasts 12 to 13 hours. “In less than four years, I am retiring, and there’s no way I’m going senior. Frankly, it’s because this job is no fun anymore.”

Also means you can’t solve – the cause of court clog is lack of judges, not too many cases

1. New legislation mean courts are clogged: Obamacare lawsuits, gay marriage licenses, civil lawsuits, patent laws didn’t trigger the brink proving the aff won’t AND non-uniques the impact.

#### Turn – Qualified immunity substantially slows down cases and increases trial costs

**Chen 97** Alan K. Chen, The Burdens of Qualified Immunity: Summary Judgment and the Role of Facts in Constitutional Tort Law, 47 Am. U. L. Rev. 1, 101 (1997)

The principal pragmatic consequence of the doctrine's factually dependent analysis is an increased likelihood that constitutional tort cases in which qualified immunity is asserted will involve a complex factual analysis**.** As this Article has explained in greater detail above**,** factual disputes under the law of qualified immunity are not unlikely, given the open-ended reasonableness standard by which assertions of the defense are to be evaluated.5 3 Accordingly, **the possibility that the immunity claim can be resolved at an early stage of the litigation becomes** more **remote**. Even assuming that the defendant can escape trial, **substantial attention will have to be paid to the pretrial litigation process**, including discovery. **Plaintiffs, defendants, and trial courts are likely to expend substantial resources simply litigating** the **qualified immunity** defense-an elaborate sideshow, independent of the merits, that in many cases will do little to advance or accelerate resolution of the legal claims.More significant is the high probability that the trial court will conclude that the factual issues underlying qualified immunity claims raise genuine issues of material fact. If that is true, then qualified immunity cases ought not to be easily resolvable on summary judgment, and many cases should go to trial. Given that the acknowledged goal of qualified immunity is to minimize the social costs of constitutional tort litigation, it would be at best ironic if qualified immunity not only failed to advance this objective, but also generated independent social costs. Yet this appears to be the case. **The heavily factual nature of qualified immunity creates** a phenomenon that can be called "secondary **burdens**"--the social costs specifically **generated by the litigation of the qualified immunity defense.** Under the present system, even if the defendant prevails on a qualified immunity claim at some point prior to trial, the factual component of the immunity inquiry may mean that she already has been subjected to much of the litigation burden attendant to a case that was tried on the merits (other than the trial itself). As the Court has acknowledged**,** at least somediscovery, and perhaps fairly extensive discovery, may be necessary to flesh out the precise nature of the defendant's conduct.59' This will generate substantial litigation burdens on defendants, whether they are vindicated prior to trial or not.This process similarly taxes plaintiffs and the court system. Moreover, if the defendant prevails on the immunity defense, it is surely possible that she might have prevailed at a trial on the merits. This may be true for two reasons. **First, if the factual scenario is such that it is not clear whether the defendant violated the plaintiff's clearly established constitutional rights, it is one in which a jury might conclude that no substantive violation of the Constitution has occurred.** After all, **the cases in which qualified immunity is likely to be meaningful are already the close ones. Second, qualified immu- nity could**, even if not resolvable prior to a trial, **be asserted as a substantive defense to liability.** 595 Therefore, it is not clear that the liability outcome fostered by immunity would necessarily be different from the outcome at trial in many cases. This has two implications. First, concerns about fairness and overdeterrence might still be accommodated at trial even if the defendant and society bear some social costs prior to the ultimate vindication on liability. Second, it is not even clear that the qualified immunity defense saves substantial social costs. Assuming that the defendant might prevail in many cases, whether on immunity grounds or on the merits, the costs eliminated by resolving the case prior to trial must be compared to the costs of trying the case. **A comparison of a system with and without immunity reveals that the immunity phase of the pretrial litigation**, however costily, **is a substitute for the costs of the trial.** In other words, **the pretrial litigation costs caused by the invoking of the immunity defense may cancel out the trial costs saved by that defense.** Although trials are certainly costly, **the costs of litigating immunity claims may also be quite significant. One scholar** has **noted anecdotal evidence that federal district court judges perceive that defendants use the qualified immunity interlocutory appeal process to protract litigation "that would otherwise be tried or settled relatively quickly**., 596 In opposing multiple interlocutory appeals in the Behrens case, the plaintiff pointed out that **the litigation of the first interlocutory appeal on qualified immunity delayed the case for four years.**597 While **this**, too, is anecdotal, it **demonstrates the possibility that immunity litigation may be costly for all involved.** If the comparative costs of pursuing qualified immunity claims (and bearing the associated costs of pretrial litigation) and going to trial were borne only by official defendants, then assessing these costs might be considerably less important. Rational defendants in such cases could decide whether the benefits of asserting qualified immunity at the pretrial stages would be outweighed by the additional costs it imposes. As with the other costs of constitutional tort litigation, however, these costs are not realized solely by defendants. Plaintiffs, **courts, and society are also saddled with additional costs that might not otherwise exist in a world without qualified immunity.** What is more, the previous discussion assumes that courts can adequately resolve qualified immunity claims on summary judgment. But the factual nature of qualified immunity also may generate irresolvable genuine fact issues.59 Indeed, the Court's recent attention to the details of interlocutory appeals of qualified immunity claims suggests that trial courts may be denying a substantial percentage of qualified immunity claims."Thus, a comprehensive analysis of the practical effects of the factual component of qualified immunity must also examine cases at the other end of the spectrum. **If the defendant loses her qualified immunity claim**, and the plaintiff ultimately prevails on the merits at trial, the entire **immunity** portion of the litigation **will have significantly driven up the litigation costs, the plaintiff's attorneys' fees** (for which the defendant may well be liable) ,m **and the resources that the trial court has devoted** to the case. Furthermore, in cases where the defendant pursues multiple interlocutory appeals on her immunity claim prior to the plaintiff's victory, the costs may be even more substantial. Thus, the Court may be exacerbating the social costs of immunity litigation by widening the availability of such appeals. r60 If this is all that qualified immunity accomplishes, **the principal policy rationale for its existence** under the modern cases-the minimization of the social costs of constitutional tort litigation-**may itself have been undermined**. In other words, **the elimination of qualified immunity might actually lower the overall social costs of constitutional tort litigation**. This is not to say that qualified immunity does not also substantially limit some of the social costs of constitutional tort litigation. Even in a case in which the defendant does not prevail on a qualified immunity claim until years of discovery and summary judgment procedures have passed, she still has saved herself and the court the considerable expense of a trial as well as the additional psychological burden associated with the risk of liability whenever one goes to trial. The point is simply that a meaningful assessment of the costs saved by qualified immunity must be measured against the costs imposed by qualified immunity. If qualified immunity litigation generates significant secondary burdens, those burdens should be evaluated relative to the putative savings promoted by the pretrial vetting of constitutional tort claims. It would be useful, for example, to know the overall costs of constitutional tort litigation presently, and compare those to costs under a system that requires defendants to defend cases on the merits.

#### Turn – Qualified immunity defenses increase trial time and delays

**Rosen 99** Sanford Jay Rosen, tenured law professor, and a senior attorney at three national civil rights organizations, the American Civil Liberties Union (ACLU), the Mexican-American Legal Defense Fund (MALDEF), and the Council on Legal Education Opportunity (CLEO), “CIVIL RIGHTS PLAINTIFFS CAN DEFEAT QUALIFIED IMMUNITY DEFENSES AND GET FRIVOLOUS APPEAL SANCTIONS: THEY SHOULD TRY MORE OFTEN!” Prison Legal News, April 1999

As pertinent here, the Supreme Court has held that government employees and officials who are sued in their personal capacities for damages for violating a person’s civil rights may terminate the lawsuit early on grounds of absolute or qualified immunity. “Unless the plaintiff’s allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery.” 3 **Defendant may raise the qualified** (or absolute) **immunity defense at almost any time** in the lawsuit; **and may do so repeatedly**. Immunity may be asserted as an affirmative defense with the answer, in a motion to dismiss for failure to state a claim on which relief can be granted, in summary judgment motions, and in motions for directed verdict during or after trial. Unfortunately, **assertion of an immunity claim provides civil rights defendants with extraordinary opportunities for trial delay**, even when the defense fails. “**The denial of** a substantial claim of absolute [or **qualified] immunity” is** an order that is **subject to interlocutory appeal before final judgment**.4 **A nonfrivolous interlocutory appeal will stay virtually all trial court proceedings**.5 **Such delay usually benefits defendant**, not plaintiff. **Issues of qualified immunity** often are difficult, as they **involve subtle legal and factual components**. To oversimplify a bit, a government employee or official enjoys qualified immunity if his or her conduct was objectively “reasonable” as measured by reference to clearly established law. 6 To defeat a claim of qualified immunity, civil rights plaintiffs must show that, if proven, the challenged conduct violated a federal right that was “clearly” established at the time of the conduct, and that defendants knew or should have known that their acts would violate plaintiffs’ right.7

IMPACT TURNS

1. Turn – Court clog is good, it destroys the criminal legal system because it can’t keep up with the amount of people it polices, helps abolition
2. Court clog means people will see the fundamental problem with the cyclical incarceration of people of colored in the PIC: less cases prosecuted means PIC has less power

# Frontlines – Shell

## O/V

Rodriguez justifies RVIs –

## A2 Specific Case Bad

Counter-interp: The affirmative may defend overturning or revising an aspect of Qualified Immunity that was established in a specific court case if they have a solvency advocate and the plan-text is disclosed on the NDCA wiki at least 1 hour before the round.

I meet

Net benefit

1. In-depth legal education- Revising specific aspects that were created by legal cases forces research on the nuance of specific legal cases. This gives us education on how laws were created. Legal education outweighs
2. most debaters become lawyers in the future because the activity is so similar
3. uniqueness- we’ve rarely had resolutions that discuss specific legal cases before.
4. Vagueness-limiting qualified immunity in general is incredibly unclear because there are so many facets and the word limit has no set meaning. I could be defending a small change, a ban or anything in-between. Multiple impacts
5. allows 1ar advocacy shifts to moot negative access to the ballot
6. judge intervention- judges won’t be able to resolve comparison of impacts because they don’t know how much of a change is made, so they cant quantify aff solvency and turns. Judge intervention is the worst harm to fairness because it completely takes the decisions out of the debater’s hands.

## A2 T – Police

Counter interp: affirmatives may defend limiting qualified immunity for correctional officers

COs are a type of police officer, **Gangi 15[[4]](#footnote-4)**

**Correctional officers** need to remain firm, fair and consistent in their dealings with the inmate population. They need to show no fear in a world that is dominated by predators and aggressors. They are the law within these walls and anything less than direct obedience from the inmate population is seen as a threat to their existence.¶ Their **interactions** with the offender **consist of multiple elements that define the role of a law enforcement professional**, minus the recognition. **These professionals stop assaults**, prevent suicides and homicides, suppress gang activity, seize contraband, **conduct investigations, make arrests**, and, most importantly, prevent escapes. All of these elements can be furthered used to assist other law enforcement agenciesin maintaining a safe and secure society. **It's by this definition they have secured their place in the law enforcement family**.¶

Net benefit

1. K education - Rodriguez 10 says that pedagogical spaces no one talks about what happens inside prisons, we lock up people and then forget about them – interogatting prisons through the counter interp is unique education that we don’t get anywhere else – k education key to education because it’s the most portable skill – also indict

#### A2 Textuality

# Frontlines – Kritiks

## A2 Wilderson

# 1AR – v WIlderson

If the world is a prison, then if we abolish the prison we abolish the world. Quality of health of world is based on the qualified immunity of the policing system – we are a demand for no immunity.

Extend the role of the ballot is to resist the prison industrial complex: two net benefits

1. **Implosion** – We make the system implode on itself because it is a knowledge that it does not want to happen. Abolitionist pedagogy occupies space by injecting knowledge that disrupts the ways in which normative knowledge flows and keep the prison invisible because we force the ballot to answer the question of the prison industrial complex. This forces the insertion of this knowledge into the space as an impossible demand – we demand that the ballot could means something that the ballot can’t handle – Rodriguez 10 says that the prison industrial complex sustains itself through liberalism
2. **Humanism** – The ways humanism operates is via this knowledge that distributes value and disposability against body lines – Dillon, white rational subjects are the surveillance mechanisms, the only ones who should do the surveillance – western rationalism – we disrupt the ways values are given on certain bodies We need to inject forms of knowledge that refuse the prison system and the liberal human subject.

We don’t focus on expressions of power rather power itself- which is proven by dillion card- it isn’t prisons but the logic of prisons

**Permutation – do both**

**“Policing blackness is what keeps everyone else sane.” The 1AC is not a single issue focus, it is a totalizing K of antiblackness. Policing is the fabric of civil society. The destruction of policing is the destruction of civil society.**

We deconstruct the idea of a criminal which is the narrative that sustains social death – call of SCOTUS is not reform but a disruption of the very fabric in which the Supreme Court tries to sustain itself Sudbury 8– **­**We are a refusal of the very language of form

Role of the ballot solves offense because it is about the prison industrial complex- Since prisions are knowledge that means that you subsume analysis of antiblackness bc you refuse humanist modes of knowledge that create the violence in first place

We Don’t focus on expressions of power rather power itself- which is proven by dillion card- it isn’t prisons but the logic of prisons

Read zanotti as the permutation- we analyze legal structures via anti-humanism- we start from the paradigm and use that paradigm to analyze how the totalities explain the particularities- This means we have a policy netbenefit to perm

Perm do both is enough to resolve the link debate

Refuse the very linguistic desires of libidinal economy- Dillion by embracing anti-productive modes of scholarship- solves the k

The plan is an imagination of flipping of the script- refusal of the very nature of power between the prison guards and the prisoner- The impossible demand that the prison guard may face redress for its libidinal control.

Infinite deferral is net benefit to the aff- Reform = forms of political change that is always constructed to prevent liberation movements- Our destabilizing of the western knowledge productions that construct the prison industrial complex allows those forms of resistance to fill the void thus resolving commodification

Aff disrupts libidinal economy which results in capitalist narratives that are used to criminalize people of color

Racial Rape Net benefit: Find modes of healing against antiqueer and antiwoc forms of violence such as rape- Resolving psychological violence from rape is a prior question to the alternative- bc psych violence prevents forms of radical engagement- proves that understanding the particularities is important

WOC and queer POC are way more likely to be raped in prison than white men – we need to understand the particularities of this violence that cannot be solved by the abolition

Black men are already seen as rape-able– when white women or white men assault black men and women they have no political power – particularities question – the alt is dialing up the abstraction to only structural question. Claiming blackness = flesh and first marker of identification, it doesn’t matter if they don’t have a way to solve 1. Intercommunal conflicts within black communities – which fractures coalitions bc no language 2. No ability to resolve the sexual violence – rape-ability is more than a part of civil society but is particularly changed by the affirmative

The impossible imagination of the policing warden who sexually assaults people is help accountable proves perm solvency- we are an impossible demand.

Black subject is below the structure of recognition

## A2 Legality Bad

#### Decarceration is an effective combination of critique, action, and goals that holds reform and abolition in creative tension in order to maintain the advantages of both—we aren’t reformism, but non-reformist reforms towards abolition

Berger 13**[[5]](#footnote-5)**

The strategy of **decarceration** combines radical critique, direct action, and tangible goals for reducing the reach of the carceral state. **It is a** coalitional strategy that works to shrink the prison system through a combination of pragmatic demands **and** far-reaching, open-ended critique. **It is** reform in pursuit of abolition. Indeed, **decarceration allows a** strategic launch pad for the politics of abolition, **providing** **what has been an** exciting but abstract framework with a course of action. **32 Rather than juxtapose pragmatism and radicalism**, as has so often happened in the realm of radical activism, **the strategy of decarceration** seeks to hold them in creative tension. **It is a strategy in** the best tradition of the black freedom struggle**. It is a strategy that seeks to** take advantage of political conditions without sacrificing its political vision. Today **we are in a moment where it is possible**, in the words of an organizer whose work successfully closed Illinois's infamous supermax prison Tamms in January 2013, **to confront prisons as both an economic and a moral necessity**. 33 Prisons bring together diverse forms of oppression across race, class, gender, sexuality, citizenship status, HIV status and beyond. **The movements against them**, therefore, **will need to bring together** diverse communities of resistance. They will need to unite people across a range of issues, identities, and sectors. That is the coalition underlying groups such as Californians United for a Responsible Budget (CURB), the Nation Inside initiative, and Decarcerate PA. The **fight against prisons** is both a targeted campaign **and** a broad-based struggle for social justice. These movements must include the leadership by those directly affected while at the same work to understand that prisons affect us all. This message is the legacy of prison rebellions from Attica in 1971 to Pelican Bay in 2012. **The challenge is to** maintain the aspirational elements of that message while at the same time translating it into a political program. Decarceration, therefore, works not only to shrink the prison system but to expand community cohesion and maximize what can only be called freedom. Political repression and mass incarceration are joined at the hip. **The struggles against** austerity, **carcerality, and social oppression, the struggles for restorative and transformative justice, for grassroots empowerment and social justice** must be equally interconnected**.** For it **is only when the movement against prisons is** as **interwoven in the social fabric** of popular resistance as the expansion of prisons has been stitched into the wider framework of society **that we might hope to supplant the carceral state**. There are many obstacles on the path toward decarceration; the existence of a strategy hardly guarantees its success. Until now, I have focused largely on the challenges internal to the movement, but there are even taller hurdles to jump in encountering (much less transforming) the deeply entrenched carceral state. Perhaps the biggest challenge, paradoxically, comes from the growing consensus, rooted in the collective fiscal troubles of individual states, that there is a need for prison reform. In that context, a range of politicians, think tanks, and nonprofit organizations—from Right on Crime to the Council on State Governments and the Pew Charitable Trusts—have offered a spate of neoliberal reforms that trumpet free market solutions, privatization, or shifting the emphasis away from prisons but still within the power of the carceral state. Examples include the “Justice Reinvestment” processes utilized by states such as Texas and Pennsylvania that have called for greater funding to police and conservative victim's rights advocates while leaving untouched some of the worst elements of excessive punishment. These neoliberal reforms can also be found in the sudden burst of attention paid to “reentry services” that are not community-led and may be operated by private, conservative entities. 34 Perhaps the grandest example can be found in California, where a Supreme Court ruling that overcrowding in the state's prisons constituted cruel and unusual punishment has been met with a proposal for “realignment,” that shifts the burden from state prisons to county jails. 35 A combination of institutional intransigence and ideological commitment to punish makes the road ahead steep. **Even as many states move to shrink their prison populations, they hav**e done so in ways that have **left in place the deepest markings of the carceral state**, such as the use of life sentences and solitary confinement, and the criminalization of immigrants. **Social movements will** need to confront the underlying ideologies that hold that there is an “acceptable” level of widespread imprisonment, that there is a specter of villainy out there—be they “illegal immigrants,” “cop killers,” “sex criminals”—waiting in the wings to destroy the American way of life. 36 There is a risk, inherent in the sordid history of prison reform, **that the current reform impulse will be bifurcated along** poorly defined **notions of “deservingness” that will continue to uphold the carceral logic that separates “good people” from “bad people**” and which decides that no fate is too harsh for those deemed unworthy of social inclusion. **This**, then, **is a movement that** needs to make nuanced yet straightforward arguments that take seriously questions of accountability while showing that more cops and more (whether bigger or smaller) cages only takes us further from that goal. 37 At stake is the kind of world we want to live in, and the terms could not be more clear: the choice, to paraphrase Martin Luther King, is either carceral chaos or liberatory community. The framework of community—as expressed Decarcerate PA slogan “build communities not prisons” and the CURB “budget for humanity” campaign—allows for a robust imagination of the institutions and mechanisms that foster community versus those that weaken it. It focuses our attention on activities, slogans, programs, and demands that maximize communities. In short, it allows for unity. If the state wants to crush dissent through isolation, our movements must rely on togetherness to win. **Solidarity is** the difference between life and death. **State repression** expands in the absence of solidarity. **Solidarity is a lifeline against the logic of criminalization and its devastating consequences**. For the most successful challenges to imprisonment come from intergenerational movements: **movements where people raise each other's consciousness and raise each other's children, movements that fight for the future because they know their history.** Here, in this pragmatic but militant radicalism, is a chance to end mass incarceration and begin the process of shrinking the carceral state out of existence.

#### Prisons seize control of resistance – any radical social movement will become squashed by the police which means the aff is a necessary prerequisite.

Gossett 14**[[6]](#footnote-6)**

**The prison industrial complex is an** always already **anti-black,** violently **antiqueer and** anti-transgender **enterprise that perpetuate**s what Saidiya Hartman names **the ‘afterlife of slavery’** (Hartman 2008: 6). **It institutionalizes** forms of **restricted life**: following ‘re-entry’, a **formerly incarcerated person loses access to** public housing**, benefits** **and** federal educational loans **and faces** chronic joblessness due to stigma. **Incarceration has been** historically **employed as a means of maintaining an anti-black** and white supremacist **sociopolitical and racial capitalist order from antebellum ‘black codes’ that criminalized vagrancy** (Dru Stanley 125 126) **post-‘emancipation’, to** more recent **attempts to extinguish the spirit and destroy the momentum of black liberationist movements** in the United States (ranging from **surveillance** and sabotage **of the R**evolutionary **A**ction **M**ovement, to COINTELPRO, to the current renewed targeting of Assata Shakur). Journalist Shane Bauer (2012) has documented how in California, the mere possession of black radical literature results in being criminalized as gang related and put in solitary housing units (SHU) - a form of torture from which exit is uncertain, whose administration is often based on whether one informs on other incarcerated people (Bauer 2012: 1-4). **Prisons** thus **continue the logic of COINTELPRO, which aimed to** neutralize and **eliminate black freedom movement**(**s**). The prison industrial complex is at once a manifestation of a disciplinary and of a control society. **The prison is one of the central** and proliferating oppressive **technologies through which** bio- and necropolitical violence and the apparatuses of surveillance that reinforce it **are naturalized. The insidious morphology of the carceral is such that** even as it is dismantled via lobbying for decriminalization and decarceration, on the one hand, **it** proliferates **via extended modes of** surveillance and control — ankle bracelets, probation and parole — on the other. Carceral violence is maintained in various penal registers and forms.

#### Infiltration Net Benefit to the 1AC – Learning the tools of the state are necessary to resist it. Universalist prescriptions that isolate ourselves from the institutions that exercise power militates against revolutionary movements—becoming acquainted with the methods of the government is specifically key to develop tactics and strategies for bringing revolution

Williams 69**[[7]](#footnote-7)**

INFILTRATE THE MANS INSTITUTIONS: **Black youth should not commit the catastrophic error of** seeing things simply in black and white. That is, of **seeing things as all** good or all **bad. It is** erroneous to think that one can isolate oneself completely from the institutions of a social and political system that exercises power over the environment in which he resides.Self-imposed and pre- mature isolation, initiated by the oppressed against the organs of a tyrannical establishment, militates against revolutionary movements dedicated to radical change**.** It is a grave error for militant and just-minded youth to reject struggle-serving opportunities to join the mans government services, police forces, armed forces, peace corps and vital organs of the power structure. Militants should become acquainted with the methods of the oppressor. Meaningful change can be more thoroughly effectuated by militant pressure from within as well as without. We can obtain invaluable know-how from the oppressor.Struggle is not all violence**.** Effective struggle requires tactics, plans, analysis and a highly sophisti- cated application of mental aptness. The forces of oppression and tyranny have perfected a highly articulate system of infiltration for undermining and frustrating the efforts of the oppressed in trying to upset the unjust status quo. To a great extent, the power structure keeps itself informed as to the revolutionary activity of freedom fighters. With the threat of extermination looming menacingly before Black Americans, it is pressingly imperative that our people enter the vital organs of the establishment. FIGHT KANGAROOISM: Inasmuch as the kangaroo court system constitutes a powerful defense arm of tyranny**,** extensive and vigorous educational work must be done among our people so that when they serve on jury duty they will not become tools of a legal system dedicated to railroading our people to concentration camps disguised as prisons. **The** kangaroo court system is being widely used to rid racist America of black militants, non-conformists and effective ghetto leadership**.** These so-called courts are not protecting the human and civil rights of our people**;** they are not dispensing even-handed justice, but are long-standing instruments of terror and intimidation. Black Americans must be inspired to display the same determination in safeguarding the human and civil rights of our oppressed people as white racists are to legally lynch us. No matter how much rigmarole is dished out about black capitalism and minority enterprise, the hard cold fact remains that it is as difficult for a Black American militant to receive justice in America's tyrannical courts as it is for a camel to pass through the eye of a needle. Black people must be brought to see their duty as jurors as an opportunity to right legal wrongs not to perpetrate shameful obeisance to tyranny and racism.Youth should mount a campaign relative to this social evil that will by far ex- ceed the campaign of voter registration.

## A2 Faciality

Not recognizing identity – we are deconstructing the PIC which is a form of staticizing identity

## A2 Agamben

#### Our form of knowledge production is a disruption of the force of the law itself that is key to liberation strategies.

Morgan 7Benjamin Morgan is an assistant professor of English at the University of Chicago. He has a PhD from the University of California, Berkeley. His research focuses on literature, science, and aesthetics. “Undoing Legal Violence: Walter Benjamin's and Giorgio Agamben's Aesthetics of Pure Means” March 2007 Journal of Law and Society, Vol. 34, No. 1 p. 46-64

PLAYING WITH THE LAW¶ This philosophical effort to describe noninstrumental means is the basis for¶ Agamben's political response to our 'global state of exception'. A theory of¶ **pure means can counteract a central problem of the state of exception**: its¶ exacerbation of **the 'nexus between violence and law'**.65 Benjamin, as we¶ have seen, views law as inherently violent in both its creation and preservation¶ in so far as it is conceived as instrumental. Agamben argues that the state¶ of exception extends this legal violence beyond its own boundaries by making¶ it possible for extra-legal actions to acquire legal status. Tracing the legal¶ history of the term 'force of law' (the title Derrida gave to an essay in which¶ he analyses 'Critique of Violence'), Agamben describes those actions that,¶ though not legally authorized, nonetheless draw upon the violence that¶ guarantees law's dictates: 'decrees, provisions, and measures that are not¶ formally laws nevertheless acquire their "force".'66 What is peculiar - and¶ dangerous - about the state of exception is that its suspension of legal norms¶ allows any action to potentially acquire legal force.67 As such, in suspending¶ the law, the state of exception does not also suspend the violence that creates¶ and maintains law, but rather makes it available for appropriation by revolutionary¶ groups, dictators, the police, and so forth: 'It is as if the suspension of¶ law freed a force ... that both the ruling power and its adversaries, the¶ constituted power as well as the constituent power, seek to appropriate.'68¶ Agamben terms this potential coincidence of every human action and legal¶ force the inseparability of law and life.¶ **Given that suspending law only increases its violent activity, Agamben¶ proposes that 'deactivating' law, rather than erasing it, is the only way to¶ undermine its unleashed force**.69 It is in this context that **Agamben offers the**¶ apparently strange **solution of 'play'** with which I began:¶ One day humanity will play with law just as children play with disused¶ objects, not in order to restore them to their canonical use but to free them¶ from it for good. What is found after the law is not a more proper and original¶ use value that precedes the law, but a new use that is born only after it. And¶ use, which has been contaminated by law, must also be freed from its own¶ value. This liberation is the task of study, or of play.70¶ In proposing this playful relation **Agamben** makes the move that Benjamin¶ avoids: **explicitly describing what would remain after the violent destruction¶ of normativity** itself. **'Play' names the unknowable end of 'divine violence'**.¶ Agamben himself may not be entirely comfortable with this moment; in the¶ final paragraph of State of Exception, he replaces this prediction with a¶ question and a possibility:¶ only beginning from the space thus opened [that is, by law's deposition] will it¶ be possible to pose the question of a possible use of law after the deactivation¶ of the device that, in the state of exception, tied it to life.71¶ Playfulness disappears completely in The Time That Remains, where¶ Christian love instead designates our relation to the fulfilled law: 'once he¶ divides the law into a law of works and a law of faith ... and thus renders it¶ inoperative and unobservable ... Paul can then fulfil and recapitulate the law¶ in the figure of love.'72 Despite Agamben's apparent hesitation, **this idea of¶ play is instructive because of its resonance with Agamben's own¶ articulations of aesthetic experience**.¶ In an essay arguing that play derives from ritual, Agamben claims that¶ **'everything pertaining to play once pertained to the realm of the sacred'**.73¶ **Play** is the participation in a ritual whose meaning has been forgotten: it¶ **converts sacred objects into mere toys**. This is what gives it its (literally)¶ revolutionary force: Agamben notes that play 'overturns' the sacred 'to the¶ point where it can plausibly be defined as "topsy-turvy sacred".'74 This¶ mediation between the sacred and the secular is the function that **Agamben**¶ **would like** play **to** perform on the law: **overturning** **it without destroying it.¶** **Play would do this by retaining law's form while forgetting its meaning**;¶ Agamben writes that **'Playland is a country whose inhabitants are busy¶ celebrating rituals, and manipulating objects and sacred words, whose sense¶ and purpose they have, however forgotten**.'75 This ritual with a forgotten¶ purpose articulates **a means without end** in so far as the end has become¶ unknowable through its forgetting. This account also amounts to a¶ transposition of Benjamin's often-cited account of the relation between the¶ sacred and the profane in 'The Work of Art in the Age of its Technological¶ Reproductibility':¶ the unique value of the 'authentic' work of art always has its basis in ritual.¶ This ritualistic basis, however mediated it may be, is still recognizable as¶ secularized ritual in even the most profane forms of the cult of beauty.76¶ Agamben's toy is thus not opposed to, but the counterpart of Benjamin's¶ 'authentic' work of art.¶ Furthermore, Agamben's claim that **law that has opened itself to play 'no¶ longer has force or application**'77 depends upon the logic that, for Agamben,¶ characterizes Kantian aesthetics. This negative definition of the figure of law¶ - as law minus force and application - removes law's functionality and¶ normativity while maintaining that something called law still exists. Defining¶ 'pure law' as what it is not repeats a rhetorical move for which Agamben¶ criticizes Kant, namely that in the third critique, 'judgment identifies the¶ determinations of beauty only in a purely negative fashion'78 and consequently¶ 'our appreciation of art begins necessarily with the forgetting of¶ art'.79 Agamben thus glosses Kant's fourth definition of the beautiful (that¶ 'which is cognized without a concept as the object of a necessary¶ satisfaction'80) to emphasize its constitutive negativity: the beautiful, he¶ says, is 'normality without a norm'.81 In State of Exception, it may not be¶ problematic that our appreciation of law would begin with the forgetting of¶ law; indeed this forgetting may be the difficult work that the book proposes.¶ But it is not only the negative structure of the argument but also the kind of¶ negativity that is continuous between Agamben's analyses of aesthetic and¶ legal judgement. In other words, 'normality without a norm', which¶ paradoxically articulates the subtraction of normativity from the normal, is¶ simply another way of saying 'law without force or application'.82 To the¶ degree that this is true, Kantian aesthetic judgement hasn't disappeared in¶ our experience of pure mediality; in fact, its name has barely changed.¶ But perhaps most interesting is the similarity between Agamben's¶ description of the disused law and a much less famous passage in Kant's¶ third critique. In a footnote to his definition of the beautiful as 'an object's¶ form of purposiveness insofar as it is perceived in the object without the¶ presentation of a purpose',83 Kant describes an object much like Agamben's¶ disused law. Anticipating a possible quarrel with his explication, Kant¶ imagines someone who would point out that there are all sorts of objects¶ whose use we don't know, but which still aren't considered beautiful:¶ It might be adduced as a counterexample to this definition that there are things¶ in which one can see a purposive form without cognizing an end in them, e.g.,¶ the stone utensils often excavated from ancient burial mounds, which are¶ equipped with a hole, as if for a handle, which, although they clearly betray by¶ their shape a purposiveness the end of which one does not know, are¶ nevertheless not declared to be beautiful on that account.84¶ These stone utensils whose ends are unknown and unknowable give us an idea¶ of what the law would look like to the humanity that Agamben hopes will play¶ with it. Where Agamben imagines a future in which the law will still exist but¶ will have lost its purpose, Kant describes a present in which we discover¶ instrumental objects whose purpose is unknown. These objects offer us yet¶ another figure of 'means without end': things which 'betray by their shape a¶ purposiveness', but whose end has been erased by historical time. Kant argues¶ that these objects are not actually susceptible to aesthetic reflection on the¶ grounds that the counter-argument assumes. But they are significant because¶ their obscured ends allow them to raise a question about their status as¶ aesthetic objects. This is the precise question raised by Agamben's figure of a¶ law to be played with after its use value has been superseded.¶ To say, however, that Agamben's theory of a deactivated law returns to a¶ theory of aesthetic judgement is not to say that Agamben aestheticizes law -¶ at least in the sense of this term that makes it an accusation. In The Time That¶ Remains, Agamben argues that a certain way of thinking about messianism¶ runs the risk of aestheticization: reducing 'ethics and religion to acting as if¶ God, the kingdom, truth, and so on existed' amounts to 'an aestheticization¶ of the messianic in the form of the as if.s85 But I am not suggesting that the¶ infiltration of aesthetic experience into Agamben's messianic law amounts to¶ a substitution of fictional for real redemption. It is not some fictionality in¶ our relation to the deposed law that renders our experience of it aesthetic but,¶ rather, its suspension of the relation between means and ends. As such,¶ Agamben's argument against the aestheticization of the messianic - that 'the¶ messianic is the simultaneous abolition and realization of the as if - does¶ not address the aesthetic trace that remains in the messianic law as¶ formulated in State of Exception. This trace, I think, may testify more to the¶ productive political possibilities of Kantian aesthetic judgement itself than to¶ some falsity of Agamben's solution.¶ Even so, this still amounts to a reading of Agamben against Agamben's¶ own intention. **Agamben ends State of Exception by suggesting that our¶ experience of the law as a pure means is capable of reclaiming the political¶ space** that he believes has been eclipsed:¶ a space between [life and law] for human action, which once claimed for itself¶ the name of 'politics'.... To a word that does not bind, that neither commands¶ nor prohibits anything, but says only itself would correspond an action as pure¶ means, which shows only itself without any relation to an end.86¶ If it is as difficult to separate the figure of pure means from aesthetic¶ purposiveness as Benjamin's and Agamben's own writings suggest, then one¶ can easily see the beauty inherent in 'action as pure means, which shows¶ only itself'.87 This leaves us with a different answer to the question with¶ which Agamben opens his book - 'What does it mean to act politically?'88 -¶ than Agamben gives. We might say that what it means to act politically is to¶ act aesthetically. To enlist the figure of pure means in a call for the return of¶ an authentic politics is to partially ground the political on that moment in¶ aesthetic judgement when we appreciate something not because it is useful¶ or because it fits with our conceptual understanding of the world, but simply¶ because we have a relation to it, independent of its purpose.

1. Necessary but insufficient burdens are bad. Kills clash because neg can always kick the NIB and go for the least covered flow instead of engaging. Clash is the most important internal link to education because the unique educational benefit of debate is interaction between competing arguments. Education is important because it’s the purpose of debate and its longest lasting impact. This is a reason to grant artificial sufficiency on the burden in order to foster more clash. Rejecting the burden doesn’t solve because that would reproduce the avoidance of clash by allowing the neg to collapse to some other undercovered flow.

#### Antiblackness kritik of agamben – the 1NC insists that power operates through states of exception, which normalizes the production of extra-legal racializing assemblages and ignores that anti-blackness needs no legal qualifications to function

Weheliye 14 (Alexander Weheliye, Associate Professor of African American Studies at Northwestern University, 2014, “Habeas Viscus: Racializing Assemblages, Biopolitics, and Black Feminist Theories of the Human,” pp 85-8, modified)

Because the dossier is so limited in scope and in order to bring Benjamin into the Schmittian fold, Agamben takes it upon himself to revise the text of Origin as it appears in the German edition of Benjamin’s collected works: “An unfortunate emendation in the text of the Gesammelte Schriften has prevented all the implications of this shift from being assessed. Where Benjamin’s text read, Es gibt eine barocke Eschatologie , ‘there is a baroque eschatology,’ the editors, with a singular disregard for all philological care, have corrected it to read: Es gibt keine . . . ‘there is no baroque eschatology’” (State of Exception , 56). According to Rolf Tiedemann, the editor of Benjamin’s Gesammelte Schriften , this particular amendment is based on contextual conjecture, as are other editorial changes, since Benjamin states at several other points in the text that the German baroque was characterized by an absence of eschatology, for instance: “the baroque knows no eschatology” and “the rejection of the eschatology of the religious dramas is characteristic of the new drama throughout Europe.” 37 The problem lies not so much in Agamben’s linking of Schmitt’s and Benjamin’s ideas, but rather in the alacrity with which he postulates direct historical connections between these two thinkers. These philological canards become indicative of Agamben’s overall appropriation of Benjamin, which has at its goal the annexing— by any means necessary— of Benjamin into the mainstream at the cost of disregarding Benjamin’s liminal status in Germany during his lifetime; it also downplays both the Marxist elements, as fractured as they may have been, and those aspects regarding the revolutionary potentiality of the oppressed in Benjamin’s philosophy. As a result, the homo sacer’s social death appears as the only feature of his or her subjectivity. Taking in other instantiations of mere life such as colonialism, racial slavery, or indigenous genocide opens up a sociopolitical sphere in which different modalities of life and death, power and oppression, pain and pleasure, inclusion and exclusion form a continuum that embody the hidden and not-so-veiled matrices of contemporary sovereignty. Agamben’s dogmatic insistence on a stringently juridical instantiation of the state of exception reinstitutes the Holocaust as the most severe and paradigmatic manifestation of bare life (here bolstered by a legal rather than moral frame of reference), and this argument also neglects forms of bare life that take place within the jurisdiction of the normal legal order.This reliance on a dogmatic conception of not only the state of exception but law in general materializes in Agamben’s discussion of incarceration. Contra Foucault, Agamben excludes the prison from the state of exception, and thus the production of bare life, because it forms a part of penal law and not martial law (the state of exception) and is therefore legally within “the normal order.” The camp, on the other hand, represents the absolute space of exception, which is “topologically different from a simple space of confinement” ( Homo Sacer , 20). 38 But as Angela Davis and Colin Dayan, among others, have shown, the violent practices in U.S. prisons neither deviate significantly from Agamben’s description of bare life vis-à-vis the suspension of law nor are mere spaces of detention. 39 Dayan explicitly addresses the continuities between slavery, imprisonment, and the torture in the Abu Ghraib prison through an excavation of the various interpretations of the Eighth Amendment to the U.S. Constitution, especially the phrase “cruel and unusual punishment,” which has been evacuated of its meaning by locating its significance solely in relation to the intent of the perpetrator. 40 In Angela Davis’s observation, torture suffuses everyday life in the United States and abroad: “The military detention center as a site of torture and repression does not, therefore, displace domestic supermaximum security prison. . . . My point is that the normalization of torture, the everydayness of torture that is characteristic of the supermax may have a longer staying power than the outlaw military prison.” 41 Slavery, imprisonment, and torture, in U.S. prisons and abroad, are legal in the strict sense and very much part of the “normal order.” Still they display many of the same features Agamben ascribes to the camp as the definitive site for the production of bare life.If we take into account the racial dimensions of the U.S. penal system, imprisonment, and torture in their full juridical and cultural normalness, it would seem that racial violence is always already beyond the law under a constant state of siege. In other words, the normal order is differentially and hierarchically structured and does not necessitate a legal state of exception in order to fabricate the mere life of those subjects already marked for violent exclusion; in fact, we might even say that this is its end goal. In the contemporary United States, the prison-industrial complex functions as a racializing assemblage that dysselects black and Latino[/a] subjects, branding them with the hieroglyphics of the flesh. In this way, blackness and racism figure as major zones of indistinction: blackness as a vital (nonlegal) state of exception in the domain of modern humanity. Which is to say, the judicial machine is instantiated differentially according to various hierarchical structures and frequently abandons numerous subjects, making them susceptible to premature death within the scope of the normal order, which, in turn, aids in the creation and maintenance of caesura among humans. Instead of being seduced by the supposed omniscience of the law, we should ask, as Dayan does, “what does the law mask?” to underscore what remains “rotten at the core of the law” (Benjamin) or its “bare-faced two-facedness” (Spillers), especially for the oppressed. Agamben goes to great lengths to show that the political tools of subjection developed during the Holocaust were not simply blunders in the progressive march of western modernity.The Holocaust provides such an apt formation for Agamben’s theorization of modern politics precisely because the Third Reich as a whole took place in a legal state of exception after the suspension of regular German law in 1933. 42 After Hitler had been appointed chancellor on January 30, 1933, the Verordnung des Reichspräsidenten zum Schutz von Volk und Staat and the Ermächtigungsgesetz (Enabling Act) were issued in February and March 1933 respectively, withdrawing most civil liberties from German citizens while granting the Nationalsozialistische Deutsche Arbeiterpartei ( nsdap) leadership almost unlimited powers in legislative, judicial, and executive matters. Since these edicts were not repealed until 1945, they established martial law (the state of exception) in effect for the duration of the Third Reich. Carl Schmitt has famously defined the sovereign as “he who decides on the state of exception,” which Agamben takes as his starting point for thinking about the field of politics. 43 Even though he claims that the state of exception cannot be conceptualized solely in legal terms, since it represents the juridical suspension of the law, Agamben insists, “a theory of the state of exception is the preliminary condition for any definition of the relation that binds and, at the same time, abandons the living being to law” ( State of Exception , 1). Nevertheless, as several critics have noted, the state of exception does not apply equally to all, since the exclusion of and violence perpetrated against some groups is anchored in the law. In a salient piece about planetary violence and the emergence of disposable populations, Ronald Judy states, “They [cannot] be explained in terms of exception, because the conditions of their existence know no temporal limits nor result from crises of sovereignty. . . . The occurrence of violence associated with disposable populations is symptomatic of the irrelevance of the entire discourse of sovereignty to the current arrangements of power, except when it operates as a means of ‘effecting control over mortality’ and as ‘a way of exercising the right to kill.’” 44 As opposed to the temporally bound state of exception espoused by Agamben and Schmitt that revokes the legal entitlements of all citizens, here different populations— often racialized— are suspended in a perpetual state of emergency in which legal rituals stain dysselected individuals and groups with the hieroglyphics of the flesh. And, as evidenced in the prison-industrial complex, the pretense of juridical equality rarely abolishes selective legal insouciance or genocidal acts against those who have been touched by racializing assemblages of the flesh.

Their focus on the state of exception obscures the specificity of antiblackness which does not require exceptional events in order to be excluded. Means reject their theory for failing to theorize the space of the prison, also independent reason to drop them for normalizing the torture within prisons which is a link to the rob.

1. c/a the morgan evidence – its written in the context of Agamben and says his alternative is to render the law inoperative by playing with the law. This exactly what the aff is, a form of non-reformist reform that seeks to deactivate the law rather than to extend it. The AC is an injection of antihumanist politic into the law that destabilizes the law, that’s our spillover claim from the AC. This also means we can limit QI so we meet the burden. Agamben himself agrees

Agamben 5 (Giorgio – Univ. Verona Philosophy professor 2005 “State of Exception” p. 63-64)

It is from this perspective that we must read Benjamin’s statement¶ in the letter to Scholem on August 11, 1934, that “the Scripture without¶ its key is not Scripture, but life” (Benjamin 1966, 618/453), as well the¶ one found in the essay on Kafka, according to which “[t]he law which¶ is studied but no longer practiced is the gate to justice” (Benjamin 1934,¶ 437/815). The Scripture (the Torah) without its key is the cipher of the¶ law in the state of exception, which is in force but is not applied or is¶ applied without being in force (and which Scholem, not at all suspecting¶ that he shares this thesis with Schmitt, believes is still law). According to¶ Benjamin, this law—or, rather, this force-of-law —is no longer law but¶ life, “life as it is lived,” in Kafka’s novel, “in the village at the foot of the¶ hill on which the castle is built” (Benjamin 1966, 618/453). Kafka’s most¶ proper gesture consists not (as Scholem believes) in having maintained¶ a law that no longer has any meaning, but in having shown that it ceases¶ to be law and blurs at all points with life.¶ In the Kafka essay, **the enigmatic image of a law that is studied but no¶ longer practiced corresponds, as a sort of remnant, to the unmasking of¶ mythico-juridical violence effected by pure violence. There is**, therefore,¶ **still a possible figure of law after its nexus with violence and power has¶ been deposed, but it is a law that no longer has force or application,** like**¶ the one in which the “new attorney,” leafing through “our old books,”¶ buries himself in stud**y, or like the one that Foucault may have had in¶ mind when he spoke of a “new law” that has been freed from all discipline¶ and all relation to sovereignty.¶ What can be the meaning of a law that survives its deposition in such¶ a way? The difficulty Benjamin faces here corresponds to a problem that¶ can be formulated (and it was effectively formulated for the first time in¶ primitive Christianity and then later in the Marxian tradition) in these¶ terms: What becomes of the law after its messianic fulfillment? (This¶ is the controversy that opposes Paul to the Jews of his time.) And what¶ becomes of the law in a society without classes? (This is precisely the debate¶ between Vyshinsky and Pashukanis.) These are the questions that¶ Benjamin seeks to answer with his reading of the “new attorney.” Obviously,¶ it is not a question here of a transitional phase that never achieves¶ its end, nor of a process of infinite deconstruction that, in maintaining¶ the law in a spectral life, can no longer get to the bottom of it. The¶ decisive point here is that **the law—no longer practiced, but studied—¶ is not justice, but only the gate that leads to it. What opens a passage¶ toward justice is not the erasure of law, but its deactivation and inactivity¶ [inoperosità]—that is, another use of the law**. This is precisely what the¶ force-of-law (which keeps the law working [in opera] beyond its formal¶ suspension) seeks to prevent. Kafka’s characters—and this is why they¶ interest us—have to do with this spectral figure of the law in the state¶ of exception; they seek, each one following his or her own strategy, to¶ “study” and deactivate it, to “play” with it.¶ **One day humanity will play with law just as children play with disused¶ objects, not in order to restore them to their canonical use but to¶ free them from it for good. What is found after the law is not a more¶ proper and original use value that precedes the law, but a new use that is¶ born only after it**. And use, which has been contaminated by law, must¶ also be freed from its own value. **This liberation is the task of study, or**¶ of **play**. And **this studious play is the passage that allows us to arrive at**¶ that **justice** that one of Benjamin’s posthumous fragments defines as a¶ state of the world in which the world appears as a good that absolutely¶ cannot be appropriated or made juridical (Benjamin 1992, 41).

1. The affirmative pushes the state of exception to the extreme. Beyond suspending the letter of the law we strip it of its force itself through non-reformist reform. That means even if they win state of exception will be applied to the aff, our argument is that we take the state of exception to the other end which makes it function as a limit to qualified immunity by deactivating the force of law.
2. No alternative means the neg impacts are nonunique – the only way this negates is through truth testing but I’ll win the rob debate

# Things to Add

## Faciality Card

The prison industrial complex is a racializing assemblage that dysselects black and latinx subjects by branding them with the hieroglyphics of the flesh.

Weheliye 14 (Alexander Weheliye, Associate Professor of African American Studies at Northwestern University, 2014, “Habeas Viscus: Racializing Assemblages, Biopolitics, and Black Feminist Theories of the Human,” pp 85-8, modified)

Because the dossier is so limited in scope and in order to bring Benjamin into the Schmittian fold, Agamben takes it upon himself to revise the text of Origin as it appears in the German edition of Benjamin’s collected works: “An unfortunate emendation in the text of the Gesammelte Schriften has prevented all the implications of this shift from being assessed. Where Benjamin’s text read, Es gibt eine barocke Eschatologie , ‘there is a baroque eschatology,’ the editors, with a singular disregard for all philological care, have corrected it to read: Es gibt keine . . . ‘there is no baroque eschatology’” (State of Exception , 56). 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These philological canards become indicative of Agamben’s overall appropriation of Benjamin, which has at its goal the annexing— by any means necessary— of Benjamin into the mainstream at the cost of disregarding Benjamin’s liminal status in Germany during his lifetime; it also downplays both the Marxist elements, as fractured as they may have been, and those aspects regarding the revolutionary potentiality of the oppressed in Benjamin’s philosophy. As a result, the homo sacer’s social death appears as the only feature of his or her subjectivity. Taking in other instantiations of mere life such as colonialism, racial slavery, or indigenous genocide opens up a sociopolitical sphere in which different modalities of life and death, power and oppression, pain and pleasure, inclusion and exclusion form a continuum that embody the hidden and not-so-veiled matrices of contemporary sovereignty. Agamben’s dogmatic insistence on a stringently juridical instantiation of the state of exception reinstitutes the Holocaust as the most severe and paradigmatic manifestation of bare life (here bolstered by a legal rather than moral frame of reference), and this argument also neglects forms of bare life that take place within the jurisdiction of the normal legal order.This reliance on a dogmatic conception of not only the state of exception but law in general materializes in Agamben’s discussion of incarceration. Contra Foucault, Agamben excludes the prison from the state of exception, and thus the production of bare life, because it forms a part of penal law and not martial law (the state of exception) and is therefore legally within “the normal order.” The camp, on the other hand, represents the absolute space of exception, which is “topologically different from a simple space of confinement” ( Homo Sacer , 20). 38 But as Angela Davis and Colin Dayan, among others, have shown, the violent practices in U.S. prisons neither deviate significantly from Agamben’s description of bare life vis-à-vis the suspension of law nor are mere spaces of detention. 39 Dayan explicitly addresses the continuities between slavery, imprisonment, and the torture in the Abu Ghraib prison through an excavation of the various interpretations of the Eighth Amendment to the U.S. Constitution, especially the phrase “cruel and unusual punishment,” which has been evacuated of its meaning by locating its significance solely in relation to the intent of the perpetrator. 40 In Angela Davis’s observation, torture suffuses everyday life in the United States and abroad: “The military detention center as a site of torture and repression does not, therefore, displace domestic supermaximum security prison. . . . My point is that the normalization of torture, the everydayness of torture that is characteristic of the supermax may have a longer staying power than the outlaw military prison.” 41 Slavery, imprisonment, and torture, in U.S. prisons and abroad, are legal in the strict sense and very much part of the “normal order.” Still they display many of the same features Agamben ascribes to the camp as the definitive site for the production of bare life.If we take into account the racial dimensions of the U.S. penal system, imprisonment, and torture in their full juridical and cultural normalness, it would seem that racial violence is always already beyond the law under a constant state of siege. In other words, the normal order is differentially and hierarchically structured and does not necessitate a legal state of exception in order to fabricate the mere life of those subjects already marked for violent exclusion; in fact, we might even say that this is its end goal. 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And, as evidenced in the prison-industrial complex, the pretense of juridical equality rarely abolishes selective legal insouciance or genocidal acts against those who have been touched by racializing assemblages of the flesh.

## Agamben Card

#### Our form of knowledge production is a disruption of the force of the law itself that is key to liberation strategies.

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PLAYING WITH THE LAW¶ This philosophical effort to describe noninstrumental means is the basis for¶ Agamben's political response to our 'global state of exception'. A theory of¶ **pure means can counteract a central problem of the state of exception**: its¶ exacerbation of **the 'nexus between violence and law'**.65 Benjamin, as we¶ have seen, views law as inherently violent in both its creation and preservation¶ in so far as it is conceived as instrumental. Agamben argues that the state¶ of exception extends this legal violence beyond its own boundaries by making¶ it possible for extra-legal actions to acquire legal status. Tracing the legal¶ history of the term 'force of law' (the title Derrida gave to an essay in which¶ he analyses 'Critique of Violence'), Agamben describes those actions that,¶ though not legally authorized, nonetheless draw upon the violence that¶ guarantees law's dictates: 'decrees, provisions, and measures that are not¶ formally laws nevertheless acquire their "force".'66 What is peculiar - and¶ dangerous - about the state of exception is that its suspension of legal norms¶ allows any action to potentially acquire legal force.67 As such, in suspending¶ the law, the state of exception does not also suspend the violence that creates¶ and maintains law, but rather makes it available for appropriation by revolutionary¶ groups, dictators, the police, and so forth: 'It is as if the suspension of¶ law freed a force ... that both the ruling power and its adversaries, the¶ constituted power as well as the constituent power, seek to appropriate.'68¶ Agamben terms this potential coincidence of every human action and legal¶ force the inseparability of law and life.¶ **Given that suspending law only increases its violent activity, Agamben¶ proposes that 'deactivating' law, rather than erasing it, is the only way to¶ undermine its unleashed force**.69 It is in this context that **Agamben offers the**¶ apparently strange **solution of 'play'** with which I began:¶ One day humanity will play with law just as children play with disused¶ objects, not in order to restore them to their canonical use but to free them¶ from it for good. What is found after the law is not a more proper and original¶ use value that precedes the law, but a new use that is born only after it. And¶ use, which has been contaminated by law, must also be freed from its own¶ value. This liberation is the task of study, or of play.70¶ In proposing this playful relation **Agamben** makes the move that Benjamin¶ avoids: **explicitly describing what would remain after the violent destruction¶ of normativity** itself. **'Play' names the unknowable end of 'divine violence'**.¶ Agamben himself may not be entirely comfortable with this moment; in the¶ final paragraph of State of Exception, he replaces this prediction with a¶ question and a possibility:¶ only beginning from the space thus opened [that is, by law's deposition] will it¶ be possible to pose the question of a possible use of law after the deactivation¶ of the device that, in the state of exception, tied it to life.71¶ Playfulness disappears completely in The Time That Remains, where¶ Christian love instead designates our relation to the fulfilled law: 'once he¶ divides the law into a law of works and a law of faith ... and thus renders it¶ inoperative and unobservable ... Paul can then fulfil and recapitulate the law¶ in the figure of love.'72 Despite Agamben's apparent hesitation, **this idea of¶ play is instructive because of its resonance with Agamben's own¶ articulations of aesthetic experience**.¶ In an essay arguing that play derives from ritual, Agamben claims that¶ **'everything pertaining to play once pertained to the realm of the sacred'**.73¶ **Play** is the participation in a ritual whose meaning has been forgotten: it¶ **converts sacred objects into mere toys**. This is what gives it its (literally)¶ revolutionary force: Agamben notes that play 'overturns' the sacred 'to the¶ point where it can plausibly be defined as "topsy-turvy sacred".'74 This¶ mediation between the sacred and the secular is the function that **Agamben**¶ **would like** play **to** perform on the law: **overturning** **it without destroying it.¶** **Play would do this by retaining law's form while forgetting its meaning**;¶ Agamben writes that **'Playland is a country whose inhabitants are busy¶ celebrating rituals, and manipulating objects and sacred words, whose sense¶ and purpose they have, however forgotten**.'75 This ritual with a forgotten¶ purpose articulates **a means without end** in so far as the end has become¶ unknowable through its forgetting. This account also amounts to a¶ transposition of Benjamin's often-cited account of the relation between the¶ sacred and the profane in 'The Work of Art in the Age of its Technological¶ Reproductibility':¶ the unique value of the 'authentic' work of art always has its basis in ritual.¶ This ritualistic basis, however mediated it may be, is still recognizable as¶ secularized ritual in even the most profane forms of the cult of beauty.76¶ Agamben's toy is thus not opposed to, but the counterpart of Benjamin's¶ 'authentic' work of art.¶ Furthermore, Agamben's claim that **law that has opened itself to play 'no¶ longer has force or application**'77 depends upon the logic that, for Agamben,¶ characterizes Kantian aesthetics. This negative definition of the figure of law¶ - as law minus force and application - removes law's functionality and¶ normativity while maintaining that something called law still exists. Defining¶ 'pure law' as what it is not repeats a rhetorical move for which Agamben¶ criticizes Kant, namely that in the third critique, 'judgment identifies the¶ determinations of beauty only in a purely negative fashion'78 and consequently¶ 'our appreciation of art begins necessarily with the forgetting of¶ art'.79 Agamben thus glosses Kant's fourth definition of the beautiful (that¶ 'which is cognized without a concept as the object of a necessary¶ satisfaction'80) to emphasize its constitutive negativity: the beautiful, he¶ says, is 'normality without a norm'.81 In State of Exception, it may not be¶ problematic that our appreciation of law would begin with the forgetting of¶ law; indeed this forgetting may be the difficult work that the book proposes.¶ But it is not only the negative structure of the argument but also the kind of¶ negativity that is continuous between Agamben's analyses of aesthetic and¶ legal judgement. In other words, 'normality without a norm', which¶ paradoxically articulates the subtraction of normativity from the normal, is¶ simply another way of saying 'law without force or application'.82 To the¶ degree that this is true, Kantian aesthetic judgement hasn't disappeared in¶ our experience of pure mediality; in fact, its name has barely changed.¶ But perhaps most interesting is the similarity between Agamben's¶ description of the disused law and a much less famous passage in Kant's¶ third critique. In a footnote to his definition of the beautiful as 'an object's¶ form of purposiveness insofar as it is perceived in the object without the¶ presentation of a purpose',83 Kant describes an object much like Agamben's¶ disused law. Anticipating a possible quarrel with his explication, Kant¶ imagines someone who would point out that there are all sorts of objects¶ whose use we don't know, but which still aren't considered beautiful:¶ It might be adduced as a counterexample to this definition that there are things¶ in which one can see a purposive form without cognizing an end in them, e.g.,¶ the stone utensils often excavated from ancient burial mounds, which are¶ equipped with a hole, as if for a handle, which, although they clearly betray by¶ their shape a purposiveness the end of which one does not know, are¶ nevertheless not declared to be beautiful on that account.84¶ These stone utensils whose ends are unknown and unknowable give us an idea¶ of what the law would look like to the humanity that Agamben hopes will play¶ with it. Where Agamben imagines a future in which the law will still exist but¶ will have lost its purpose, Kant describes a present in which we discover¶ instrumental objects whose purpose is unknown. These objects offer us yet¶ another figure of 'means without end': things which 'betray by their shape a¶ purposiveness', but whose end has been erased by historical time. Kant argues¶ that these objects are not actually susceptible to aesthetic reflection on the¶ grounds that the counter-argument assumes. But they are significant because¶ their obscured ends allow them to raise a question about their status as¶ aesthetic objects. This is the precise question raised by Agamben's figure of a¶ law to be played with after its use value has been superseded.¶ To say, however, that Agamben's theory of a deactivated law returns to a¶ theory of aesthetic judgement is not to say that Agamben aestheticizes law -¶ at least in the sense of this term that makes it an accusation. In The Time That¶ Remains, Agamben argues that a certain way of thinking about messianism¶ runs the risk of aestheticization: reducing 'ethics and religion to acting as if¶ God, the kingdom, truth, and so on existed' amounts to 'an aestheticization¶ of the messianic in the form of the as if.s85 But I am not suggesting that the¶ infiltration of aesthetic experience into Agamben's messianic law amounts to¶ a substitution of fictional for real redemption. It is not some fictionality in¶ our relation to the deposed law that renders our experience of it aesthetic but,¶ rather, its suspension of the relation between means and ends. As such,¶ Agamben's argument against the aestheticization of the messianic - that 'the¶ messianic is the simultaneous abolition and realization of the as if - does¶ not address the aesthetic trace that remains in the messianic law as¶ formulated in State of Exception. This trace, I think, may testify more to the¶ productive political possibilities of Kantian aesthetic judgement itself than to¶ some falsity of Agamben's solution.¶ Even so, this still amounts to a reading of Agamben against Agamben's¶ own intention. **Agamben ends State of Exception by suggesting that our¶ experience of the law as a pure means is capable of reclaiming the political¶ space** that he believes has been eclipsed:¶ a space between [life and law] for human action, which once claimed for itself¶ the name of 'politics'.... To a word that does not bind, that neither commands¶ nor prohibits anything, but says only itself would correspond an action as pure¶ means, which shows only itself without any relation to an end.86¶ If it is as difficult to separate the figure of pure means from aesthetic¶ purposiveness as Benjamin's and Agamben's own writings suggest, then one¶ can easily see the beauty inherent in 'action as pure means, which shows¶ only itself'.87 This leaves us with a different answer to the question with¶ which Agamben opens his book - 'What does it mean to act politically?'88 -¶ than Agamben gives. We might say that what it means to act politically is to¶ act aesthetically. To enlist the figure of pure means in a call for the return of¶ an authentic politics is to partially ground the political on that moment in¶ aesthetic judgement when we appreciate something not because it is useful¶ or because it fits with our conceptual understanding of the world, but simply¶ because we have a relation to it, independent of its purpose.

## Other cards

#### The push for decarceration is a radical break from reforms for better administrative function of justice—this is key to push normative debates to their core and challenge the ideology of incaceration

Murakawa 14**[[8]](#footnote-8)**

Liberal Law-and-Order in the Twenty-First Century The perils of postwar liberal law-and-order are worth recalling in the twenty-first century, when **demands for reform** **are** loud but modest in scope and normatively untethered. **Parts of the carceral state are too expensive for fiscal conservatives, too intrusive for civil libertarians, and too cruel for human rights advocates**. Michelle Alexander’s 2010 blockbuster The New Jim Crow invigorated opposition to the drug war, and the chorus demanding reform of drug penalties includes everyone from Jimmy Carter to William F. Buckley and Milton Friedman. 10 At the same time, however, twenty-first-century carceral apparatuses do not suffer any overwhelming credibility problem. If the American public evaluates judges negatively, it is for sentencing too leniently, not too aggressively. Between 1972 and 2012, a national survey asked about how “the courts in this area deal . . . with criminals,” and across all years nearly 85 percent of respondents answered “about right” or “not harshly enough.” Recent years have seen a very modest decline in support for courts, yet, in 2012, a majority of respondents (63 percent) deemed courts “not harsh enough” and 21 percent deemed courts “about right.” 11 Similarly, a **majority of Americans have a great deal of confidence in the police, and most see police officers as fair.** In the 20 years of Gallup asking the same question, consistently more than half of respondents said they have “quite a lot” or “a great deal” of confidence in police, while, during the same period, a combined 8 and 16 percent said they had “very little” or “no confidence” in them. A 2005 Gallup poll found that nearly two-thirds of respondents believed that police brutality did not exist in their area. 12 Those evaluations are based more on police adherence to procedural justice rather than instrumental evaluations of police performance in catching rule-breakers, fighting crime, or providing fair outcomes. 13 Given general assent to the carceral state, it is perhaps no surprise that twenty-first-century reforms lurch about in fits and starts. Between 2009 and 2013, **New Mexico, Connecticut, and Maryland voted to abolish the death penalty, but Californians voted to keep the death penalty in a 2012 ballot initiative, showing once more that the death penalty is “rocked but still rolling**.” California limited but Massachusetts expanded three-strikes legislation in 2012. 14 When twenty-first-century students learn about carceral practices, they tend to propose a number of possible reforms: hire more African American police officers; reinstate judicial discretion; limit police discretion; train police. Like federal **lawmakers**, they search for ways to improve the administration of justice for fairness and predictability. **The history of liberal law-and-order matters because** the same **proposals for better administration**, proffered with the same good intentions, **are likely to** reproduce the same monstrous outcomes in the twenty-first century**. The problems of a normatively untethered liberal law-and-order regime are clear in the arc of liberal positions on judicial discretion. Mid-century liberals viewed discretion as dangerous individualized justice, tailored to each defendant from each judge’s moral cloth in all its idiosyncratic textures**. Judicial discretion lurked in law’s “twilight zone,” dispensing what Judge Marvin Frankel called “law without order.” Liberal fear of discretion endured through the mid-1980s, when one could easily characterize the “mainstream liberal thought” as unambiguously opposed to discretionary administrative interpretation and implementation. 15 With the rise of sentencing guidelines and mandatory minimums through the 1980s and 1990s, however, liberals called for more judicial discretion by praising that which they previously reprimanded— justice customized to each individual defendant. 16 **As a project to control the irrationalities of racial bias and administrative discretion, liberal law-and-order ignored empirical lessons and displaced normative questions. Reformers invoked the promises and perils of “discretion” while ignoring the central findings of research.** The American Bar Foundation’s 1957 survey and the myriad studies it inspired analyzed discretion within the “total criminal justice system.” As a system, **carceral machinery is** not easily corrected by small administrative adjustments: **tighten discretion in one place, and the criminal justice system “accommodates,”** to use the original language of the ABF studies, **so that discretion simply becomes more important for a different decision maker**. Accommodation is evident of sentencing guidelines and mandatory minimums, which diminished judicial discretion but effectively increased prosecutorial discretion. When situated with a total system approach, the “amount” of discretion has neither increased nor decreased, concludes Samuel Walker; it has simply moved from one agency to another. 17 **Administrative tinkering** does not confront the damning features of the American carceral state, its scale and its racial concentration, **which, when taken together** reinforce and raise African American vulnerability to premature death. **By focusing on the intra-system problems of “discretion,” lawmakers** displaced questions of justice onto the more manageable, measurable issues of system function. When framed as a problem of discretion— that is, individual decision making permissible by formal rules— then **solutions** **to racial inequality** double back to individual administrators and their institutional rules. In this sense, **problematizing discretion forces questions of remediation** onto sanitary administrative grounds**. Should judges be elected or appointed? Should judges administer justice through sentencing guidelines? No guidelines and some mandatory minimums? No mandatory minimums and only mandatory maximums? Will judges or parole boards select the final release date?** These questions matter, but they cannot replace clear commitments to racial justice. **When they are posed independently of normative** **goals**, process becomes the proxy, not the path, to justice. Without a normatively grounded understanding of racial violence, liberal reforms will do the administrative shuffle. This book traced a stark half-century turn from confronting white racial violence administered and enabled by carceral apparatuses, to controlling black criminality through a procedurally fortified, race-neutral system. Race liberals institutionalized the “right to safety” while skirting its animating call against state-sanctioned white violence. **Fixation on administrative minutiae distracted from the normative core of punishment in a system of persistent racial hierarchy.** Unlike administrative tinkering, reforms for decriminalization and decarceration would push debates to their normative core: **what warrants punishment, in what form, and why**? 18 In place of liberal searches for the ideal procedural path to life incarceration, **metrics of racial justice should focus on what Ruth Wilson Gilmore calls “the state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death.”** 19 Seeing racism as “group-differentiated vulnerabilities to premature death” gives proper context to acts of violence between individuals. If we situate private violence in relation to group-differentiated reality, we begin to see the tight weave of state and private racial violence. An example often mobilized to repressive ends is the fact that most crimes occur within rather than between racial groups, such that African Americans, Latinos, and Native Americans confront high incarceration rates and high victimization rates. This is the complex story of the U.S. racial state, where normal institutional and ideological processes perpetuate the multigenerational transmission of accumulated advantage and accumulated disadvantage. 20 Accumulated advantage imparts a presumption of innocence; inherited wealth enables home ownership in class-segregated areas (i.e., “a safe neighborhood”) and medical insurance for diagnosis of conditions and coverage of various prescriptions such as Ritalin (i.e., more effective forms of meth). In contrast, accumulated disadvantage imparts a presumption of guilt.

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